

REPORTER'S RECORD

74145

VOLUME 1 OF 65 VOLUMES

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT
VS. : DALLAS COUNTY, TEXAS
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

FILED IN
COURT OF CRIMINAL APPEALS

MASTER INDEX

DEC 5 2001

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On the 26th day of February, through the 30th day of
June, 2001, the following proceedings came on to be heard in
the above-entitled and numbered cause before the Honorable F.
Harold Entz, Jr., Judge presiding, held in Dallas, Dallas
County, Texas: Proceedings reported by machine shorthand,
computer assisted transcription.

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Reporter's Certificate

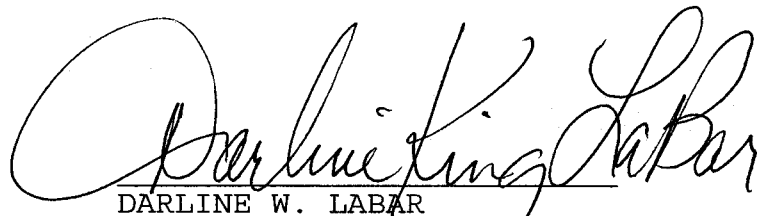
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 27th day of November. A.D., 2001.



DARLINE W. LABAR
Official Court Reporter
194th Judicial District Court
Dallas County, Texas
(214) 653-5803

Certification No. 1064 Expires December 31, 2002

74145

REPORTER'S RECORD

VOLUME 2 OF 65 VOLUMES

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT
VS. : DALLAS COUNTY, TEXAS
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

FILED IN
COURT OF CRIMINAL APPEALS

PRETRIAL HEARING

DEC 5 2001

Troy C. Bennett, Jr., Clerk

A P P E A R A N C E S:

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BY: MS. MARY MILLER, A.D.A., SBOT # 21453200
FOR THE STATE OF TEXAS;

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MR. MICHAEL BYCK, Attorney at Law, SBOT # 03549500
MS. JENNIFER BALIDO, Attorney at Law, SBOT # 10474880
Dallas County Public Defenders Office
Dallas, Texas 75207
Phone: 214-653-9400
FOR THE DEFENDANT.

On the 26th day of February, 2001, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable F. Harold Entz, Jr.,
Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by machine shorthand, computer
assisted transcription.

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P R O C E E D I N G S

THE COURT: Cause F00-02424-NM, styled the State of Texas versus Jedidiah Isaac Murphy.

Let the record reflect the State is present and represented by Chief Prosecutor 194th District Court, the Honorable Mary Miller.

The record reflect the defendant is represented by three co-counsels: Lead counsel, the Honorable Jane Little is present in court; the Honorable Michael Byck is present in court; and the Honorable Jennifer Balido is also present in court.

Is your name Jedidiah Isaac Murphy?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Murphy, pursuant to Texas Code of Criminal Procedure Article 34.04, the Court is now presenting to you the list of jurors for petit jury service in this matter.

Does either side object to the Court tendering the list, or does either side require or ask that Donna Roach, the Dallas County Jury Services administrator, present the list to me and me in turn to the defense?

MR. BYCK: The defense would have no objection to the Court presenting the list, Your Honor.

MS. MILLER: The State has no objection, Your Honor.

1 THE COURT: Mr. Murphy, the list of jurors is
2 now being presented to you. Do you acknowledge receipt of
3 the list?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Hearing is adjourned. We will
6 resume Friday this week.

7 (Recess of proceedings.)
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Reporter's Certificate

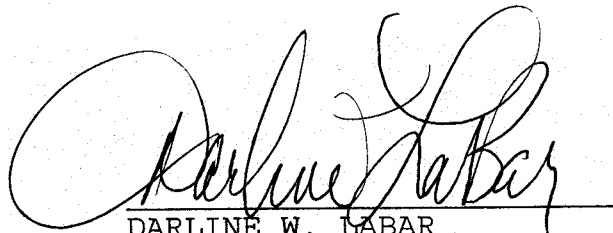
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 2nd day of October, A.D., 2001.



DARLINE W. LABAR
Official Court Reporter
194th Judicial District Court
Dallas County, Texas
(214) 653-5803

Certification No. 1064 Expires December 31, 2002

REPORTER'S RECORD

74145

VOLUME 3 OF 65 VOLUMES

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT
VS. : DALLAS COUNTY, TEXAS
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

GENERAL VOIR DIRE

FILED IN
COURT OF CRIMINAL APPEALS

DEC 5 2001

A P P E A R A N C E S:

Troy C. Bennett, Jr., Clerk

HONORABLE BILL HILL, Criminal District Attorney
Crowley Criminal Courts Building
Dallas, Dallas County, Texas 75207
Phone: 214-653-3600

BY: MR. GREG DAVIS, A.D.A., SBOT # 05493550
MS. MARY MILLER, A.D.A., SBOT # 21453200
FOR THE STATE OF TEXAS;

MS. JANE LITTLE, Attorney at Law, SBOT # 12424210
MR. MICHAEL BYCK, Attorney at Law, SBOT # 03549500
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Dallas County Public Defenders Office
Dallas, Texas 75207
Phone: 214-653-9400
FOR THE DEFENDANT.

On the 2nd day of March, 2001, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable F. Harold Entz, Jr.,
Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by machine shorthand, computer
assisted transcription.

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P R O C E E D I N G S

MR. BYCK: We want to waive on the -- Your Honor, may the record reflect that after seeing the jury seated prior to the beginning of voir dire the defense will waive and give up its right to a shuffle.

We have waived our right to a shuffle.

MR. DAVIS: Oh, okay. The State has no request for a shuffle.

THE COURT: The Court is calling for trial at this time cause numbered F00-02424-NM, case styled the State of Texas versus Jedidiah Isaac Murphy.

Is the State prepared to begin?

MR. DAVIS: The State's ready, Your Honor.

THE COURT: Is the defense prepared to begin?

MR. BYCK: Defense ready, Your Honor.

THE COURT: The record reflect the person of the accused, Jedidiah Isaac Murphy, is present in the Central Jury Room of the Frank Crowley Criminal Courts Building at this time. He will be at all times during these proceedings absent my dictating the contrary into the record.

Ladies and gentlemen, before I swear you in as prospective jurors in this matter, let me give you a bit of an overview of the proceedings you can anticipate experiencing this morning. After I have sworn you in as prospective jurors, I will then be going over the statutory

1 requirements of jury service. I will also be going over the
2 exemptions that the legislature has placed for consideration
3 by qualified prospective jurors. The Court in the presence
4 of counsel however will not entertain those questions about
5 your eligibility or exemptions until that period of time when
6 a majority of you will be filling out a questionnaire. At
7 that time, and I will make reference to when that procedure
8 will begin, going to ask that you form a single file to the
9 far right and on a one-by-one basis, presence of the court
10 reporter, counsel for the State, counsel for the defense, we
11 will hear what your particular circumstance might be.

12 Depending upon the circumstance and the applicable law, a
13 ruling will be made by the Court that will either excuse you
14 or cause you to be considered a continuing prospective juror.

15 Ladies and gentlemen, after I go over the statutory
16 qualifications of jury service and exemptions, pursuant to
17 Texas law I'm required to propound certain principles about
18 the case that is on trial. After I have completed that and
19 explained to you the procedures that will be by law utilized
20 in this particular matter, questionnaires will be handed
21 out. Each of you should have by this time a clipboard and
22 some sort of a writing instrument. Call your attention that
23 when you fill out that questionnaire, you will by that time
24 have been placed under oath so your responses will be under
25 oath subject to the law of perjury such as is applicable in

1 the State of Texas.

2 After the questionnaires have been completed, we
3 will take approximately a one-hour break. There is a
4 cafeteria located on the first floor of this building which
5 you may want to chance. Those of you who have been down here
6 before know where of I speak. More I choose to say not.
7 After we have had about a one hour break, we'll ask that you
8 return. You need not necessarily sit in the same order that
9 you now find yourselves. During that one hour break those
10 whom you see up here before me, whom I will be introducing
11 momentarily, and I and my court staff will be going through
12 the questionnaires. A number of you will be called back at a
13 later time for individual questioning. Hopefully the
14 procedure that we will be engaged in today will be over by
15 early, early afternoon at the latest. A number of you will
16 not be called back, a great many of you will, for individual
17 questioning as is provided by the Texas Code of Criminal
18 Procedure in a case of this type.

19 Ms. Debbie Daily is the Court Administrator. She
20 and a staff will be working so that four of you will be
21 summoned to come down in a morning, four in the afternoon.
22 If on the date that you are summoned to return, some
23 particular difficulty complicates your return, the attorneys
24 and I understand. Please call Ms. Daily, make her aware of
25 what the circumstance is. And with the assistance of the

1 attorneys and the Court, we will be reschedule you for a time
2 that's more appropriate. I realize that accidents may occur
3 or may be a personal emergency, such as a death in the
4 family. Matters such as that are not contemplated or
5 planned, but they happen. If that should be your
6 circumstance, please do not hesitate in letting us know about
7 what the circumstance is so that we may accommodate you.
8 Those of you that are not given a date and time to return
9 will be excused from further jury service as relates to this
10 case and will be free to go back home, back to work as the
11 case may be, and forget about this experience other than what
12 you've experienced this morning.

13 With that as a bit of a profile of what procedures
14 you can expect this morning, may I ask all of you to please
15 rise and raise your right hands.

16 Ladies and gentlemen, for purposes of your
17 individual religious belief, or matters of personal
18 conscience, at your option the operative verb will be either
19 "swear" or "affirm."

20 Do each of you solemnly swear or affirm that you
21 will make true answers to such questions as may be propounded
22 to you by the court or under its directions touching your
23 service and qualifications as a juror, so help you God.

24 (Potential Panel Sworn)

25 THE COURT: Thank you. Please lower your

1 hands and again please be seated.

2 Ladies and gentlemen, I am first going to begin with
3 the statutory qualifications of jury service, followed
4 thereafter by the exemptions. Again, please, for the benefit
5 of your fellow jurors' time and the entire proceedings this
6 morning, hold your specific problem until we get to the
7 questionnaire portion. At that time we would welcome,
8 entertain what comments that you may have as relates to your
9 particular circumstance.

10 To be a prospective qualified juror, you must be 18
11 years of age or older. You must currently reside within
12 Dallas County, Texas. And you must be a citizen of the
13 United States of America. Up until a few years ago we had
14 little problem with this particular provision because only
15 those individuals that were registered voters were those from
16 whom the list of prospective jurors were called. The
17 legislature a few years ago included the pool of prospective
18 jurors to be not only registered voters, but also those
19 individuals that had a Texas drivers license.

20 I am well aware, I trust you are as well, that there
21 are many, many individuals lawfully, and I emphasize that
22 adverb, lawfully living in Dallas County who possess a valid
23 Texas drivers license but are not citizens of the United
24 States of America, but by virtue of the drivers license
25 received a summons, and wanting to avoid the punitive aspects

1 of failing to show up, present themselves nevertheless. So
2 if you are not a citizen, not 18 years of age or older, and
3 don't presently live within Dallas County, you are not a
4 prospective qualified juror.

5 Next requirement is that you must be of sound mind.
6 Unless you have been declared mentally incompetent by a
7 court, should be no problem, I would hope.

8 Next requirement is a literacy requirement. 49 of
9 the 50 jurisdictions that make up this the United States of
10 America have some form or fashion of this particular
11 provision. Texas is about as bland as most. We but say one
12 must be able to read and write. No requirement you've
13 graduated from high school or have a GED. Rule of thumb
14 utilized in all 254 counties of Texas is the following: If
15 upon receiving your jury summons without having to depend
16 totally upon the literacy efforts of a spouse or relative or
17 neighbor or a friend, but as a result of your reading your
18 summons you're here today, such should be sufficient for this
19 particular requirement.

20 Next requirement deals with prior petit or trial
21 jury service, different types of courts, different time
22 periods. If you have served as a petit or trial juror for
23 five days during the preceding 3 months in a county court, a
24 6-person court, or 5 days during the preceding 12 months in a
25 12-person or a district court, be it civil, criminal,

1 juvenile, or family law, until those time periods have
2 elapsed, you are not again a qualified juror.

3 Next requirement is that you have not been convicted
4 of a felony. Ladies and gentlemen, there are two broad
5 categories of criminal offenses. One known as a misdemeanor,
6 which is a criminal offense punishable by jail time and/or a
7 fine. A felony, on the other hand, is a criminal offense
8 punishable by penitentiary time.

9 Next requirement is that you have not been convicted
10 of theft, be it misdemeanor or felony, nor that you be under
11 any legal accusation, on bond, if you will, for a felony at
12 this present time.

13 Ladies and gentlemen, under Texas law, some, not
14 all, but some hot checks are considered under the Penal Code
15 to be a theft. Having though said that if you and a business
16 have had a bit of difficulty about a check and resolved it
17 without anybody intervening in the criminal justice field, no
18 problem. If however the matter escalated to the point where
19 it was brought to the attention of a court through a justice
20 of the peace or a county criminal court or a district court,
21 such as the court over which I preside, you paid a fine,
22 court costs, maybe were given time for the short period of
23 time that you were in custody, in addition to restitution for
24 the face amount of the check, that may well be considered a
25 theft conviction, thereby disqualifying you. On the other

1 hand, though, if you and the business handled it through a
2 phone call, came up and made good on the check and paid X
3 number of dollar amount return check fee, no problem.

4 If in the past you've been on probation for a felony
5 or theft and have successfully lived out that probationary
6 period and are no longer on probation, assuming you meet the
7 statutory qualifications I have previously discussed or
8 mentioned, no problem.

9 So much for the statutory qualifications for jury
10 service. I'm now going to be moving into the area of
11 exemptions.

12 Ladies and gentlemen, exemptions differ markedly
13 from qualifications. If you are qualified and fall within
14 one of the areas that the legislature has designated as an
15 exemption and wish to claim that exemption, your request will
16 be granted. On the other hand, just because you have an
17 exemption does not mean that you must claim it. And frankly
18 and selfishly, I would hope that those of you, depending upon
19 the exemption that have one, would choose not to claim it but
20 would continue to participate with us in this particular
21 proceeding.

22 If you are 70 years of age or older, you may claim
23 your senior age status an exemption and be excused. Just
24 because you are 70, if you are otherwise qualified, you are
25 not required to claim age as an exemption and be excused.

1 This next one for I think obvious reasons the
2 attorneys and I would hope that you would claim. If you have
3 custody of a child or children under the age of 10 and if by
4 virtue of your presence down here a child or children are
5 left without adequate supervision or care, obviously we would
6 hope you would claim that exemption and be excused.

7 I have been privileged to be a trial judge for
8 nearly 28 years now. I've had individuals disqualify
9 themselves under all of the provisions I previously
10 mentioned, every exemption save and except this one. Maybe
11 the string will be broken this morning. If you are a high
12 school student and have such a burning desire to get back to
13 chemistry and physics and calculus and would choose not to
14 participate in the democratic form of government as a
15 prospective juror, come on up. Let me know. I want to shake
16 your hand and send you on your way back to school.
17 Seriously, high school students may claim an exemption by
18 virtue of that status.

19 If you are enrolled and attending an accredited
20 college. Ladies and gentlemen, the Supreme Court and Court
21 of Criminal Appeals on a couple of occasions have indicated
22 this refers to daytime classes. If you are a --
23 hypothetically a student going to, taking enrichment classes,
24 maybe getting a Masters degree at S.M.U. or taking some type
25 of an adult education class at one of the community colleges

1 at the nighttime, I assure you your participation down here
2 in this process of jury service will not interfere or
3 conflict with that.

4 Talk about having a good lobby. If you are an
5 employee of the legislative branch of state government, not
6 the judicial branch, not the executive branch, but the
7 legislative branch of state government, you may claim that
8 employment as an exemption.

9 Ladies and gentlemen, there is an error
10 unfortunately in the summons that came out. We caught it
11 after the particular provision the printer -- current summons
12 went to print. If you have served as a petit juror, trial
13 juror, not a grand juror, petit juror in any court, be it a
14 municipal court, a county court, a district court, even a
15 Federal district court, since July 1st the year 2000, you may
16 claim an exemption of that prior jury service. It's not a
17 disqualification. The legislature the last session drafted
18 for some reason -- the legislative history is a bit murky,
19 but nevertheless this is now a particular provision in the
20 government code which you are free to claim if it's
21 applicable to you.

22 So much for the statutory qualifications required to
23 be a prospective juror. So much for the exemptions.

24 Again, as I indicated, please hold your questions in
25 that regard until we begin the questionnaire portion of the

1 proceedings this morning.

2 Ladies and gentlemen allow me, if I may, to
3 introduce those individuals whom you see seated before you at
4 this time. To my immediate right is the defendant, the
5 accused, if you will. Based upon some pretrial matters
6 having previously gone on prior to today, I have come to know
7 this individual as Jedidiah Isaac Murphy.

8 Mr. Murphy, will you please rise, let the members of
9 the panel see you, please.

10 Thank you, you may be seated.

11 Ladies and gentlemen, three members of the Dallas
12 County Public Defenders Office are present on behalf of their
13 client, Mr. Murphy. Lead counsel for the defense, a former
14 Chief Prosecutor in the Dallas District Attorneys Office
15 before she went to work with the Dallas County Public
16 Defenders Office, the Honorable Jane Little.

17 Ms. Little, if you please.

18 MS. LITTLE: Good morning.

19 THE COURT: Assisting Ms. Little, to her right
20 as you look at them, a veteran attorney here in Dallas
21 County, the Honorable Mike Byck.

22 MR. BYCK: Good morning.

23 THE COURT: Unlike the pen, his name is not
24 spelled B-i-c, it's B-y-c-k.

25 The third member of the Dallas County Public

1 Defenders Office representing Mr. Murphy is the Honorable
2 Jennifer Balido.

3 Ms. Balido.

4 MS. BALIDO: Good morning.

5 THE COURT: Ladies and gentlemen, the counsel
6 table to the right of the defense attorneys are two senior
7 members of the Dallas County District Attorney's Office. One
8 of the most Senior Prosecutors in the Dallas District
9 Attorneys Office is lead counsel for the State, the Honorable
10 Greg Davis.

11 Mr. Davis, if you please.

12 MR. DAVIS: Good morning.

13 THE COURT: Assisting Mr. Davis with regard to
14 this prosecution is at the present time and has been for some
15 few years now the Chief Prosecutor assigned to the 194th
16 District Court, the court over which I am privileged to
17 preside, the Honorable Mary Miller.

18 Ms. Miller.

19 MS. MILLER: Good morning, ladies and
20 gentlemen.

21 THE COURT: To my immediate left is the
22 official court reporter for the 194th District Court, Ms.
23 Darline King. She is taking down not only the comments that
24 I'm making to you at this time for purposes of the trial
25 record, but in addition when those of you have questions for

1 the attorneys and I about your eligibility to be a qualified
2 juror and to claim an exemption, she will be taking down your
3 comments as well. Now, the attorneys and I are well aware
4 that when those of you that come up to the side, some of you
5 may be discussing with us matters of a personal nature which
6 would be a bit embarrassing to have a room full of strangers
7 be made aware. That be the case, we understand. We do
8 though for purposes of the trial record respectfully ask that
9 you speak loud enough so that not only the attorneys and I,
10 but also Ms. King can get your response, thereby making
11 certain that we have a complete trial record for appellate
12 purposes if that should become necessary.

13 Ladies and gentlemen, I have already introduced to
14 you the accused. Jedidiah Isaac Murphy has been indicted by
15 a Dallas County Grand Jury for the offense of capital murder.
16 The State has made known its intent to seek the death
17 penalty. That is the purpose of this special venire. For
18 those of you that have been down here before and think these
19 proceedings are a little bit different than what you've
20 experienced in the past, you're correct. Because Texas
21 legislature through the Code of Criminal Procedure has
22 required that a different procedure with regard to death
23 penalty cases be implemented which we are complying with at
24 the present time.

25 I am required now by virtue of Article 35.17,

1 Section 2, of the Texas Code of Criminal Procedure to make
2 you aware of certain matters I hope and trust we were all
3 taught when we were in junior high or middle school or high
4 school taking a government class. But nevertheless, given
5 the importance of the proceedings and the requirement in the
6 Texas Code of Criminal Procedure, I do so again.

7 Previously indicated that the defendant has been
8 indicted by a Dallas County Grand Jury. An indictment in and
9 of itself is no evidence of guilt at all. An indictment
10 appraises a defendant of the offense charged against him.
11 That same document, the indictment, puts the State on notice
12 of those matters which they must place in evidence and
13 convince a jury beyond a reasonable doubt before a jury is
14 entitled to return a verdict of guilty. The indictment also
15 confers jurisdiction or judicial authority, if you will, upon
16 a District Court. So, therefore, Mr. Murphy is aware that he
17 has been charged with capital murder. He's not been charged
18 with drug possession or burglary or sexual assault. He
19 understands, as does his attorneys, that he has been charged
20 with capital murder.

21 He as he sits before you today, the indictment
22 notwithstanding, must be presumed to be innocent. Every
23 individual indicted, including Mr. Murphy, or it would be any
24 one of you were you seated where he now finds himself, must
25 be guaranteed that same right.

1 The burden of proof, the responsibility of proving
2 the allegations in the indictment and endeavoring, if they
3 can, to overcome the presumption of innocence, lies with the
4 State in the persons of the prosecutors, Mr. Davis, Ms.
5 Miller, and their witnesses, and any scientific evidence that
6 is offered which the Court deems admissible. The State has
7 the responsibility of proving any defendant guilty, be it a
8 misdemeanor, a felony, including but not limited to a capital
9 murder case. The amount of evidence that the jury must hear
10 and believe before a verdict of guilty can be returned,
11 before the presumption of innocence can be overcome, is proof
12 beyond a reasonable doubt. Not the Perry Mason standard of
13 beyond a shadow of a doubt, not 100 percent certainty.
14 Because I submit to any one of you that if you were 100
15 percent certain of the allegations in the indictment, you
16 would not be seated where you now find yourselves, but would
17 be on the list of prospective witnesses in this particular
18 prosecution.

19 If after hearing the evidence you have a reasonable
20 doubt as to one of the constituent parts of the indictment,
21 by law the jury must return a verdict of not guilty. On the
22 other hand, if after hearing the evidence, receiving the
23 instructions from the Court, called the Court's charge, and
24 after deliberating with your 11 fellow jurors, you become
25 convinced beyond a reasonable doubt that all of the

1 applicable portions, which we call elements in the
2 indictment, the charging document, have been satisfied to
3 your belief beyond a reasonable doubt, the presumption of
4 innocence is overcome, by law, pursuant to the oath that the
5 jurors will by that time have taken, obligates you to return
6 a verdict of guilty.

7 Ladies and gentlemen, 1972 the United States Supreme
8 Court ruled that regular, quote, unquote, murder cases
9 violated the United States Constitution. Case is Furman
10 versus Georgia, 1972. The Supreme Court in that opinion
11 indicated that without, quote, unquote, guided discretion,
12 too much authority or power was in the hands of the
13 prosecutors. And on somewhat a random, inconsistent basis,
14 individuals were being sentenced to death and executed.

15 After that rather block buster opinion came out,
16 legislatures around the country who wanted by virtue of
17 public opinion, political opinion to implement a capital
18 scheme consistent with the constitutional mandates developed
19 by the United States Supreme Court, came up with a number of
20 different schemes. There are basically three schemes that
21 are now in place throughout the country, one being the Texas
22 scheme which is also utilized by Oregon, also have the
23 Georgia scheme and also have the Florida scheme.

24 . Basically the Supreme Court said there must be
25 something more than just the taking of a human life before

1 the ultimate punishment would pass constitutional muster. A
2 number of states, Florida being the primary one, have adopted
3 a number of what they call aggravating factors which are put
4 in place at the penalty stage of the trial, depending upon
5 the jury verdict, in that a recommendation is made to the
6 Florida trial judge as to whether or not, based upon the
7 evidence and the aggravating and mitigating factors, death or
8 life should be the result.

9 Texas, on the other hand, did it a bit differently.
10 Texas put what are called the aggravating factors into the
11 indictment. And not only that, and I'll get into the penalty
12 stage of a capital scheme momentarily. To be a valid
13 indictment for capital murder, the indictment in Texas must
14 allege murder plus. Now, what is that plus?

15 Plus can be another felony offense during the
16 commission of the murder, such as robbery or kidnapping or
17 sexual assault or burglary. Status is also protected. A
18 peace officer or a fireman during the lawful discharge of
19 their duties, if murdered, can be a capital case. Mass
20 killing also can be a capital case. Age can also be a
21 status. The intentional taking of the life of a person under
22 the age of 6 can be a capital case. Also, for remuneration,
23 kill for hire, or a serial killer could be a capital case.

24 The indictment present in this particular case
25 alleges murder during the course of robbery or kidnapping.

1 The State may plead in the conjunctive or -- no, and, robbery
2 or kidnapping, but only need to prove one, disjunctive.
3 Therefore, if the State in this case proves a murder,
4 kidnapping or robbery as a part thereof, that makes it a
5 capital case.

6 If you as a jury find murder but not the added
7 factor, in this case kidnapping or robbery, it would be a
8 verdict of guilty of murder but not capital murder. And
9 there's a significant difference with regard to punishment.

10 Murder, not capital murder is a first degree felony
11 under the Penal Code of the State of Texas, which means an
12 individual found guilty of murder in Texas is looking at a
13 penalty range of not less than 5 nor 99 years or life, with
14 an optional fine not to exceed \$10,000.

15 On the other hand, an individual found guilty of
16 capital murder, but two options, life or death. An
17 individual in Texas found guilty of capital murder and
18 sentenced to life in the penitentiary by law must serve 40
19 calendar years in confinement before being eligible for
20 consideration on parole. On the other hand, an individual
21 convicted of murder, not capital murder, must serve 50
22 percent of the calendar time of the sentence, but not more
23 than 30 years before being eligible for consideration on
24 parole. Very appropriately, in my judicial opinion, the
25 legislature in the State of Texas, with regard to the death

1 sentence, has fashioned our law in such a way that a life
2 sentence as opposed to a death sentence is the preferred
3 outcome. Because the State under our scheme and it's not
4 just Dallas County, but statewide, just because the jury
5 returns a verdict of capital murder does not equal death.
6 Under our statute there are other matters that the jury must
7 take into consideration before they make that ultimate,
8 ultimate decision.

9 If you are selected as a juror in this case, and if
10 the jury returns a verdict of capital murder, each side is
11 entitled to present additional evidence for the consideration
12 of the jury on the matter of punishment. At the conclusion
13 of the evidence in the penalty stage of the trial, another
14 instruction will be given by the Court, the assistance of the
15 attorneys, at which in a case of this type, the jury will be
16 called upon to answer two questions. These questions are
17 statutory, not just something that I dreamed up driving down
18 to the courthouse to be with you this morning.

19 The first question the jury will be called upon to
20 answer is as follows: Whether there is a probability that
21 the defendant would commit criminal acts of violence that
22 would constitute a continuing threat to society. That would
23 be a type of case -- hypothetically, penalty stage, jury had
24 found the defendant guilty of capital murder, that would be
25 the question, the first question. Again, whether there is a

1 probability that the defendant would commit criminal acts of
2 violence that would constitute a continuing threat to
3 society.

4 If the 12 jurors do not unanimously answer that in
5 the affirmative, it's a life sentence and that's it with
6 regard to the trial. On the other hand, if the jury after
7 answering that first question, the answer results 12 yeses,
8 all affirmative, then and only then need the jury get to the
9 second question.

10 And that question is as follows, quoting: "Whether
11 taking into consideration all of the evidence, including the
12 circumstances of the offense, the defendant's character and
13 background, and the personal moral culpability of the
14 defendant, there is a sufficient mitigating circumstance or
15 circumstances to warrant that a sentence of life imprisonment
16 rather than a death sentence be imposed."

17 Therefore, ladies and gentlemen, bit of a recap.
18 Just because an individual in Texas has been indicted and is
19 found guilty by a jury of capital murder does not
20 automatically equate death. These special issues must be
21 considered by the jury, and only if answered unanimously
22 first one yes, second one no, does death result. Unlike
23 Florida in which the juries give a recommendation to the
24 trial judge, not so in Texas. Given the populist background
25 that we have in this state the trust and faith that we as a

1 body politic give in our citizens, whatever the decision of
2 the jury is, is final. A trial judge may not serve, if you
3 will, as a thirteenth juror, either way. Either way.

4 To be a prospective qualified juror, you must be
5 willing to tell yourself, most importantly, therefore the
6 attorneys and Mr. Murphy, that you are willing to listen and
7 consider mitigating circumstances or evidence if that is
8 presented. Because if you say I don't care what mitigating
9 evidence is presented, the United States Supreme Court has
10 said that is not a qualified -- a death qualified juror. If
11 you hear mitigating evidence and decide that it is not
12 sufficient to give the defendant a life sentence, that's
13 fine. That's your call. But you must be willing to be a
14 death qualified juror, pursuant to the United States Supreme
15 Court, be willing to listen and then determine whether or not
16 the mitigating circumstances rise to that level as a result
17 of which in this case Mr. Murphy should live and not die.
18 Realizing that a life sentence is 40 years, flat time, and I
19 mean day-for-day, week-for-week, month-for-month.

20 Awful quiet out there, isn't it? I realize, as the
21 attorneys do, that this is a difficult matter to
22 contemplate. You know, we don't go around at social settings
23 say what do you think about the death penalty, you know. A
24 little bit macabre, yes. I assure you, I had a lot more hair
25 before I started these than I do now. It's been said by a

1 very, very prominent legal philosopher that second only to
2 serving our country on the field of battle during wartime is
3 the responsibility we call upon our fellow citizens to serve
4 as a juror in a death penalty case. I've thought about that
5 a lot over the last many, many years, and I think that's
6 pretty true. I've been called upon in my judicial capacity
7 to preside over quite a few of these. They are not easy for
8 the Judge, I promise you. They are not easy for the lawyers.

9 And they are not easy for the jurors. We, though, as a
10 body politic call upon you who have been randomly selected.
11 We don't go out and pick and choose you, I assure you. We
12 ask only that you reach into your heart of hearts and give
13 your best. I am not here to advance the cause of the death
14 penalty, nor to be a passivist and say I don't care what the
15 circumstances are.

16 On the front page of the questionnaire that you'll
17 be receiving shortly you will see what over a number of years
18 attorneys, be they prosecutors or defense attorneys, and
19 judges have come up with, with regard to basically how we
20 have found over a number of years of conducting trials of
21 this kind how jurors feel. None of the attorneys nor I know
22 how any one of you feel about this. The questionnaires will
23 be handed out to you momentarily. Recall if you will that
24 you are under oath. The 12 that will serve as jurors will
25 not be selected today.

1 The questionnaires will be kept confidential.
2 Available only to the Court, the attorneys for the State and
3 the defense. Upon the conclusion of the trial, only for
4 trial record purposes, will the original be kept. I will
5 require the State and the defense to turn over to me their
6 copies, and they will be shredded and destroyed. Therefore
7 your responses will be kept confidential only to the limited
8 extent that, if necessary, some appeals court somewhere down
9 the line may want to take a look at an individual's
10 questionnaire, but for no other reason. No other reason.
11 Not be turned over to some doctoral student at some college
12 or university to make an analysis of prospective death
13 penalty jurors in Dallas County. Trust me.

14 Likewise, from a procedural standpoint, the
15 attorneys, though we will be -- they and I will be going over
16 briefly the questionnaires during the one-hour break, next
17 week they will be looking over the questionnaires in a bit
18 more detail. If you today are summoned back subsequent to
19 which there's some other matters in your questionnaire that
20 will negate your having to return, please be certain you put
21 a good telephone number on your questionnaire so that Ms.
22 Daily, the Court Administrator, can call you because
23 obviously we want to avoid having your coming down here if we
24 know you're not going to be needed for individual
25 questioning.

1 The attorneys will be spending next week going over
2 the questionnaires with a fine tooth comb. I will not be
3 going over that. I already have a trial scheduled.
4 Following Monday we'll begin individual questioning.

5 Now, this process of individual questioning for a
6 capital jury in Texas can be a bit time-consuming. Based on
7 past experience we hopefully anticipate that not only will
8 the process be completed to give the attorneys a couple of
9 last two weeks to get all of their evidence in order,
10 probably testimony in this matter will begin the day after
11 Memorial Day. The day after Memorial Day, a Tuesday. Those
12 of you between now and then, that after your individual
13 questioning we'll tell you whether or not you remain under
14 consideration. Feel free to call the Court on a regular
15 basis if you wish to see how the process is being -- how it
16 is being completed and how far along the road we are.

17 Each side under Texas law in a capital case in which
18 death is being sought have 15 peremptory challenges. A
19 peremptory challenge is the excusing by one side or the other
20 of an otherwise qualified juror as long as the challenge is
21 not utilized for racial or gender purposes. Neither side can
22 say because the prospective qualified juror is a male, a
23 female, African American, Asian American, whatever, cannot
24 utilize that as a constitutionally permissible exercise of a
25 peremptory challenge. Does not mean that individuals of an

1 identifiable ethnic background cannot be peremptorily
2 excused, but ethnicity cannot be the reason. Must be a
3 reason other than ethnicity.

4 Sam, are we ready on the questionnaires?

5 Ladies and gentlemen, the questionnaires will be
6 handed out by representatives of the Dallas Sheriff's
7 Department and some of my court staff. Please recall, if you
8 will, that you are under oath while you're answering these
9 questions. As soon as you have completed the questionnaire,
10 if you'd please put it on the table to the right.

11 It is 10:15. Let me ask that all of you be back in
12 this Central Jury Room say 11:45. Is that fair? 11:45.
13 And at that time we will go over the questionnaires and I'll
14 call out the names and that will hopefully give us enough
15 time to put up the list with regard to individual questions.

16 Sheriff, if you please, the questionnaires.

17 Those of you who have questions about your statutory
18 qualifications and exemptions, wait until the questionnaires
19 have been handed out and then if you'd come up to your far
20 right and make a single line and will take your circumstances
21 as you present them to us.

22 (Side Bar Conference)

23 THE COURT: May I have a representative of the
24 State and the defense?

25 The record reflect these hearings are being

1 conducted in the presence of the State and the defense, Mr.
2 Murphy is not present in such a manner that he can hear the
3 prospective jurors.

4 Does the defense have any objection to Mr. Murphy
5 sitting where he is?

6 MS. BALIDO: I think under the statute he's
7 supposed to be, Judge.

8 THE BAILIFF: If y'all will, just back up just
9 a bit.

10 THE COURT: Does he want to be over here, Mr.
11 Byck? Does he want to be over here?

12 MR. BYCK: No.

13 I'll stand behind you.

14 THE COURT: What is your name, please?

15 VENIREPERSON: Vanessa Willis.

16 THE COURT: What is your circumstance?

17 VENIREPERSON: You said if you have a theft
18 and I'm still on paper, I shouldn't be a juror.

19 THE COURT: Are you on theft probation?

20 VENIREPERSON: Uh-huh.

21 THE COURT: Either side? Theft probation.

22 MS. MILLER: I didn't hear her name.

23 THE COURT: Vanessa Willis.

24 MR. DAVIS: We don't have any objection.

25 MS. LITTLE: Just for the record, how much

1 money are we talking about here? Is it a misdemeanor or a
2 felony?

3 VENIREPERSON: It's a misdemeanor, but he said
4 misdemeanor or felony.

5 MS. LITTLE: Okay.

6 THE COURT: And you're on probation at the
7 present time?

8 VENIREPERSON: Yes.

9 THE COURT: You are excused. Just leave this
10 here.

11 VENIREPERSON: So can you give me a release?

12 THE COURT: They'll give it to you.

13 VENIREPERSON: Thank you.

14 (Venireperson brought forward.)

15 THE COURT: What is your name?

16 Juror 1837, Queen Elizabeth Sewell. What is your
17 circumstance?

18 VENIREPERSON: I just got off work. I work at
19 7:00 at night to 7:00 in the morning. And I just recently
20 moved to Arlington.

21 THE COURT: You live in Arlington now?

22 VENIREPERSON: Yes. I brought my check stub
23 for you.

24 THE COURT: We trust you. Yeah, just leave it
25 here.

1 Next.

2 VENIREPERSON: Hello.

3 THE COURT: What is your name, please?

4 VENIREPERSON: Claire Page.

5 THE COURT: Claire Page.

6 VENIREPERSON: Yes.

7 THE COURT: What is your circumstance?

8 VENIREPERSON: I leave on March the 8th for a
9 business trip to England until March 26th.

10 THE COURT: No problems. Stay with us, we'll
11 work with you.

12 VENIREPERSON: Okay. Stay here?

13 THE COURT: Stay here and fill it out.

14 VENIREPERSON: Oh, gosh.

15 THE COURT: Next.

16 (Venireperson brought forward.)

17 THE COURT: What is your name, please?

18 VENIREPERSON: Deborah Riley, R-i-l-e-y.

19 THE COURT: Thank you. What is your
20 circumstance?

21 VENIREPERSON: I have tickets to go to Italy
22 that leave on Sunday, March 4th, and I won't be back until
23 March 14th.

24 THE COURT: No problem. Stay with us.

25 VENIREPERSON: And also my daughter is

1 graduating from college in California on April the 27th.

2 THE COURT: We'll work with you. Thank you.

3 Just stay here.

4 Next.

5 (Venireperson brought forward.)

6 THE COURT: Good morning. What is your name,
7 please?

8 VENIREPERSON: Michelle Gross.

9 THE COURT: Michelle Gross. Michelle, what is
10 your situation?

11 VENIREPERSON: I have two questions.

12 THE COURT: Sure.

13 VENIREPERSON: The first is if the case was to
14 start on June 1st, how long would it last, because I have to
15 go to a high school graduation in June and I'm probably going
16 to fly out -- if it's more than two weeks.

17 MS. LITTLE: Shouldn't be more than two weeks.

18 VENIREPERSON: So it's no more than 10 days?

19 THE COURT: No. Thank you.

20 (Venireperson brought forward.)

21 THE COURT: What is your name, please?

22 VENIREPERSON: William Charles Sergeant.

23 MR. DAVIS: We have no objections.

24 MS. LITTLE: Nor do we.

25 THE COURT: You are excused. Thank you. You

1 may take this with you.

2 THE COURT: Next.

3 (Venireperson brought forward.)

4 THE COURT: What is your name, please?

5 VENIREPERSON: Karen Kingston.

6 THE COURT: Karen Kingston. Ms. Kingston,
7 what is your circumstance?

8 VENIREPERSON: I just wanted the Court to be
9 aware that I will be out of the country from the 16th of
10 March to the 15th of April.

11 THE COURT: No problem. We'll work with you.
12 Thank you.

13 (Venireperson brought forward.)

14 VENIREPERSON: Carolyn Dawson.

15 THE COURT: Carolyn Dawson. What is your
16 circumstance, please?

17 VENIREPERSON: I have, I think two or
18 whatever, theft by check.

19 THE COURT: What's the status of those? Are
20 they pending?

21 VENIREPERSON: Oh, no.

22 THE COURT: Are they over?

23 VENIREPERSON: Yes.

24 THE COURT: What happened?

25 VENIREPERSON: I had to pay a court fine. It

1 was in the JP court. It was in the JP court. Theft by
2 check.

3 MR. DAVIS: No objections.

4 THE COURT: Either side care to her being
5 excused?

6 MR. BYCK: No objection.

7 MS. LITTLE: Okay.

8 THE COURT: Thank you. You are excused.

9 MS. BALIDO: In whose court was it?

10 MS. MILLER: JP.

11 MS. BALIDO: Those are IBC's.

12 (Venireperson brought forward.)

13 VENIREPERSON: Batot, B-a-t-o-t, first name
14 Paul. I will be commencing treatment for prostate cancer.

15 THE COURT: When?

16 VENIREPERSON: Next week.

17 THE COURT: How long will the treatment last?

18 VENIREPERSON: I don't know. The doctor says
19 it depends what it looks like when it gets started. Could be
20 two to three months.

21 MR. BYCK: We would agree.

22 MS. LITTLE: We agree.

23 MR. DAVIS: We agree.

24 THE COURT: Thank you.

25 Next.

1 (Venireperson brought forward.)

2 VENIREPERSON: My name is Jeremiah Gonzalez.

3 THE COURT: Yes, sir.

4 VENIREPERSON: I have three children, and I
5 have to pick them up everyday at 3 o'clock.

6 THE COURT: Can your wife make arrangements to
7 pick them up?

8 VENIREPERSON: She works.

9 THE COURT: You pick them up everyday?

10 VENIREPERSON: Everyday. Her job is to drop
11 them off. My job is to pick them up.

12 THE COURT: How old are they?

13 VENIREPERSON: I have an 11-year-old, I have a
14 7-year-old and a 5-year-old.

15 THE REPORTER: I'm sorry, what was his name?

16 THE COURT: Jeremiah Gonzales.

17 You are excused.

18 VENIREPERSON: Thank you.

19 (Venireperson brought forward.)

20 THE COURT: What is your name, please?

21 VENIREPERSON: Brenda Ball, B-a-l-l.

22 THE COURT: Thank you.

23 VENIREPERSON: I'm sorry, I'm emotional being
24 here. I'm self-employed. And I don't believe in the death
25 penalty. I just can't.

1 THE COURT: Just fill it out. That's all we
2 need. Thank you. Just return to your seat. Thank you.

3 (Venireperson brought forward.)

4 VENIREPERSON: My name is hard to spell.
5 Margaret Gulsvig. And I currently don't reside in Dallas
6 County.

7 THE COURT: You don't?

8 VENIREPERSON: No.

9 THE COURT: Thank you. You're excused. Thank
10 you.

11 Next.

12 (Venireperson brought forward.)

13 THE COURT: What is your name, please?

14 VENIREPERSON: Jack Donaldson.

15 THE COURT: Jack Donaldson.

16 VENIREPERSON: I actually live in Denton
17 County.

18 MS. LITTLE: Well, ta-ta, Mr. Donaldson.

19 VENIREPERSON: I tried to tell them. They
20 said come, so I came.

21 MR. BYCK: Thank you, sir.

22 THE COURT: Next.

23 (Venireperson brought forward.)

24 THE COURT: What's your name, please?

25 VENIREPERSON: Well, it's Pam McAfee.

1 THE COURT: Pam McAfee. Your circumstances?

2 VENIREPERSON: I have a bad back. I can't
3 sit, stand, lay, or anything for any time at all. I'm
4 qualified disability through Social Security.

5 THE COURT: Counsel?

6 MR. BYCK: No objection.

7 MS. LITTLE: Okay.

8 MR. DAVIS: Excused.

9 THE COURT: Okay. You're excused.

10 Next.

11 (Venireperson brought forward.)

12 VENIREPERSON: My name is David Turner.

13 THE COURT: What is your circumstance, Mr.
14 Turner?

15 VENIREPERSON: I served as a petit juror in
16 July or August of this past summer.

17 THE COURT: Do you want to claim that as an
18 exemption, or do you want to stay with us?

19 VENIREPERSON: I want to claim that.

20 THE COURT: What court?

21 VENIREPERSON: I don't remember right now.

22 THE COURT: Was it civil or criminal? Was it
23 this building?

24 VENIREPERSON: It was criminal case in this
25 building. I went through voir dire. I wasn't selected for

1 the panel, for the jury panel itself.

2 THE COURT: Oh, then you weren't a petit
3 juror.

4 VENIREPERSON: No?

5 THE COURT: No. Have a seat. Fill out the
6 questionnaire for us. Thank you.

7 (Venireperson brought forward.)

8 VENIREPERSON: Hi.

9 THE COURT: What is your name, please.

10 VENIREPERSON: R-a-z-a, I-m-r-a-n.

11 THE COURT: Yes, sir.

12 VENIREPERSON: I am Muslim and I have send a
13 letter, my beliefs contradict with the -- I'm Muslim so I
14 contradict with the beliefs.

15 THE COURT: Just fill it out. We'll take care
16 of it.

17 VENIREPERSON: Okay.

18 (Venireperson brought forward.)

19 THE COURT: What is your name, please?

20 VENIREPERSON: Peggy Fredrickson.

21 THE COURT: Peggy Fredrickson. Yes.

22 VENIREPERSON: I'm a teacher. I have
23 conferences in the morning and afternoon everyday for the
24 next two weeks.

25 THE COURT: We'll work with you. We'll work

1 with you.

2 VENIREPERSON: All right.

3 THE COURT: Just fill it out. Stay with us.

4 Thank you.

5 (Venireperson brought forward.)

6 THE COURT: Hi. What is your name, please?

7 VENIREPERSON: Larry E. Lewis.

8 THE COURT: Larry E. Lewis.

9 VENIREPERSON: I no longer live in Dallas
10 County.

11 THE COURT: You don't? Where do you live?

12 VENIREPERSON: In Euless.

13 MR. BYCK: Have a nice drive home, Mr. Lewis.

14 THE COURT: Next.

15 (Venireperson brought forward.)

16 THE COURT: What is your name, please?

17 VENIREPERSON: John Green.

18 THE COURT: What is your circumstance, Mr.
19 Green?

20 VENIREPERSON: I am a single parent, and I
21 don't believe -- I have to be home to --

22 MR. BYCK: How old is your child?

23 VENIREPERSON: He's 11.

24 MR. BYCK: And no one else cares for that
25 child?

1 VENIREPERSON: No. I work at night, and my
2 girlfriend stays with him at night.

3 THE COURT: He's 11. There is nothing we can
4 do to help you out. Have a seat back there. Thank you.

5 (Venireperson brought forward.)

6 THE COURT: Your name, please?

7 VENIREPERSON: Sandra Vail.

8 THE COURT: Sandra Van?

9 VENIREPERSON: Sandra Vail, V-a-i-l.

10 THE COURT: What is your circumstance?

11 VENIREPERSON: Is this trial taking place
12 during the summertime? I'm a stay-at-home mother during the
13 summer. I have a 10-year-old daughter who was 10 in
14 January. I also have a son who has just finished
15 chemotherapy for testicular cancer. He'll be having another
16 cat scan in March. If the cancer returns, I will be
17 unavailable because I will have to be back with him. I spent
18 all last summer with him in North Carolina.

19 THE COURT: Counsel?

20 MR. DAVIS: We'll agree.

21 MS. LITTLE: Okay, that's fine.

22 THE COURT: Counsel?

23 MS. LITTLE: It's okay.

24 THE COURT: You are excused. Thank you.

25 Next.

1 (Venireperson brought forward.)

2 THE COURT: Your name, please?

3 VENIREPERSON: Barbara Conley.

4 THE COURT: Barbara Connally?

5 VENIREPERSON: Conley, C-o-n-l-e-y.

6 THE COURT: Thank you. What's your

7 circumstance?

8 VENIREPERSON: I had an insufficient check 15,

9 20 years ago. I had to go to court to pay it.

10 THE COURT: Put on probation?

11 VENIREPERSON: Yeah.

12 MS. LITTLE: What type of check?

13 VENIREPERSON: It wasn't very much, less than

14 a hundred dollars.

15 THE COURT: Lived out probation?

16 VENIREPERSON: Oh, yeah, no problem.

17 THE COURT: No problem. Stay back with us.

18 MS. LITTLE: Good try.

19 VENIREPERSON: May I go to the rest room right

20 quick?

21 THE COURT: Sure.

22 (Venireperson brought forward.)

23 THE COURT: Your name, please.

24 VENIREPERSON: Sheila Palmer.

25 THE COURT: All right.

1 VENIREPERSON: My husband and I are selling
2 our home this afternoon, at which time I'll be a resident of
3 Tarrant County.

4 THE COURT: The heck you will.

5 VENIREPERSON: Sorry.

6 THE COURT: Congratulations. You're excused.

7 VENIREPERSON: Thank you.

8 (Venireperson brought forward.)

9 THE COURT: Your name, please.

10 VENIREPERSON: My name is Lewis. James Lewis.

11 MS. LITTLE: He's the one that moved here.

12 VENIREPERSON: And I've been convicted of
13 several felonies, no violent crime or nothing like that, but
14 still felonies.

15 THE COURT: What was the felony?

16 VENIREPERSON: DWI and --

17 THE COURT: How many DWI's?

18 VENIREPERSON: One.

19 THE COURT: It's a misdemeanor.

20 VENIREPERSON: Well, I still got a probation
21 and also I had a -- for possession of marijuana.

22 THE COURT: How much?

23 VENIREPERSON: Probably a couple of ounces
24 back in the early 70's, and also I don't believe in capital
25 punishment.

1 THE COURT: That would be a felony conviction
2 back then.

3 VENIREPERSON: Yes, sir.

4 THE COURT: Thank you. You are excused.

5 VENIREPERSON: All right.

6 THE COURT: Sam, he's excused.

7 (Venireperson brought forward.)

8 THE COURT: Your name, please?

9 VENIREPERSON: Lugo Braulio. B-r-a-u-l-i-o.

10 THE COURT: What's your circumstances?

11 VENIREPERSON: I'm a -- not a U.S. citizen.

12 THE COURT: You're not a citizen?

13 VENIREPERSON: No, sir.

14 THE COURT: A citizen of where, Mexico?

15 VENIREPERSON: Mexico. I'm a resident, but
16 I'm not a U.S. citizen.

17 THE COURT: You are excused. Thank you.

18 (Venireperson brought forward.)

19 THE COURT: Jacob John.

20 VENIREPERSON: I have two kids. I have to
21 pick one up from school right now, like 12 o'clock, and then
22 another one at 2:15.

23 MS. LITTLE: How old are they?

24 VENIREPERSON: Huh?

25 MS. LITTLE: How old are your children?

1 VENIREPERSON: The first one -- the first one
2 is 8 and she is in second grade. And the other one, the
3 second one is like 4 and a half.

4 MS. LITTLE: Okay.

5 THE COURT: You are excused. Thank you.

6 (Venireperson brought forward.)

7 THE COURT: Sir?

8 VENIREPERSON: Andres Aleman Garcia.

9 THE COURT: What is your circumstance, Mr.
10 Garcia?

11 VENIREPERSON: My what?

12 THE COURT: What is your --

13 VENIREPERSON: Well, I don't want to serve.

14 THE COURT: Huh?

15 VENIREPERSON: I can't read and write real
16 English, you know.

17 THE COURT: Are you a citizen?

18 VENIREPERSON: Yes. But I can't -- I only go
19 to 6th grade in Mexico.

20 MS. LITTLE: It's okay.

21 MR. DAVIS: We'll agree.

22 THE COURT: You are excused. Whoops. Next.

23 (Venireperson brought forward.)

24 THE COURT: What is your name, please?

25 VENIREPERSON: James C. Clark.

1 THE COURT: James Clark. What is your
2 circumstance, sir?

3 VENIREPERSON: I have a 6-year-old son I have
4 full custody of, and there is no way that I can --

5 THE COURT: Who takes care of him while you
6 work during the day?

7 VENIREPERSON: Right now he's in school, and
8 then I got to go pick him up.

9 THE COURT: What time?

10 VENIREPERSON: I pick him up by 3:30.

11 THE COURT: Everyday?

12 VENIREPERSON: Well, I try get him picked up
13 by 3:30. I spend as much time as I can with him.

14 THE COURT: You can't make any arrangements
15 for a family member or relative to pick him up?

16 VENIREPERSON: I could.

17 THE COURT: Please try that. Have a seat.

18 (Juror brought forward.)

19 THE COURT: Your name, please?

20 VENIREPERSON: Theresa Westbrook.

21 THE COURT: Theresa Westbrook. What is your
22 circumstance?

23 VENIREPERSON: I have to pick my daughter up
24 everyday after school, and I'm sick today.

25 THE COURT: Can you make arrangements to have

1 somebody else pick the child up?

2 VENIREPERSON: There is no one else. She is
3 out of district. She's going to a talented and gifted
4 school.

5 THE COURT: I'm sorry?

6 VENIREPERSON: She's going to a talented and
7 gifted school.

8 THE COURT: Are there any relatives or friends
9 that pick her up due to your jury service?

10 VENIREPERSON: No.

11 THE COURT: None at all?

12 VENIREPERSON: No. They are all working.

13 THE COURT: All right. You are excused.

14 Sam --

15 MS. LITTLE: You should have told them when we
16 thought the trial would take to.

17 THE COURT: Next.

18 (Venireperson brought forward.)

19 VENIREPERSON: You said something about --

20 THE COURT: What is your name, please?

21 VENIREPERSON: Patrick Heck.

22 THE COURT: Patrick Allen Heck, H-e-c-k.

23 Yes, sir.

24 VENIREPERSON: You said something about being
25 convicted of misdemeanor theft.

1 THE COURT: Yes.

2 VENIREPERSON: I have been.

3 THE COURT: Went to jail?

4 VENIREPERSON: Yes.

5 THE COURT: Not placed on probation?

6 VENIREPERSON: I did time served and

7 probation.

8 THE COURT: Counsel, what do you think? Want
9 to check it out?

10 MR. BYCK: What was it?

11 MS. LITTLE: Theft. Misdemeanor theft?

12 VENIREPERSON: Yes, ma'am. It was \$200, and
13 it got dropped to Class C.

14 MR. DAVIS: We'll agree.

15 MR. BYCK: We'll agree.

16 THE COURT: You are excused. Thank you.

17 (Venireperson brought forward.)

18 THE COURT: Linda Lee Headrick Houston.

19 What is your circumstances?

20 VENIREPERSON: I have a 90-year-old mother
21 that was in hospital last month and diagnosed with congestive
22 heart failure. At this time my sister and I are her primary
23 caregivers, and my sister has a trip planned for Hawaii, so I
24 will be the primary caregiver for a while.

25 MR. BYCK: We'll agree.

1 MR. DAVIS: We agree.

2 THE COURT: You are excused.

3 VENIREPERSON: Thank you much.

4 (Venireperson brought forward.)

5 THE COURT: What is your name, please?

6 VENIREPERSON: Nguyen Thi Clay.

7 THE COURT: Nguyen Thi Clay.

8 What is your circumstance, please?

9 VENIREPERSON: (No response.)

10 THE COURT: What do you want to tell us?

11 VENIREPERSON: We don't understand.

12 MS. LITTLE: Do you speak English?

13 VENIREPERSON: Yes, a little bit.

14 MS. LITTLE: Okay.

15 MR. DAVIS: We'll agree.

16 MR. BYCK: We'll agree.

17 THE COURT: Thank you. You are excused.

18 Sam, he's excused.

19 Good morning.

20 (Venireperson brought forward.)

21 VENIREPERSON: Good morning.

22 THE COURT: Your name for the court reporter,
23 please?

24 VENIREPERSON: Melinda Hugonoit.

25 THE COURT: Melinda H-u-g-o-n-i-o-t. What is

1 your circumstance, please?

2 VENIREPERSON: As of the day after Memorial
3 Day, I'll be enrolled at U.T.A. full time for summer school.
4 Right now I'm taking one night class, but I'll be doing
5 full-time summer school.

6 MS. LITTLE: When does it begin?

7 VENIREPERSON: It begins the day after
8 Memorial Day.

9 THE COURT: You are excused.

10 Sam, excused.

11 (Venireperson brought forward.)

12 THE COURT: Get your name, first.

13 VENIREPERSON: Kyle Greathouse.

14 THE COURT: What is your circumstances, sir?

15 VENIREPERSON: My wife and my -- and she is
16 severely mentally ill. She just got out of Rusk State
17 Hospital, Tyler State Hospital. She can't go without daily
18 supervision. I can't stay a long way from her. I don't have
19 anybody to watch her.

20 THE COURT: Do you work?

21 VENIREPERSON: Yes, sir, I work for short
22 periods of time. Yes.

23 THE COURT: Counsel, what is your pleasure?

24 MR. DAVIS: We'll agree.

25 THE COURT: You are excused.

1 VENIREPERSON: Thank you very much.

2 THE COURT: That's interesting. Talking about
3 an invalid. It doesn't mention age.

4 (Venireperson brought forward.)

5 THE COURT: Your name is?

6 VENIREPERSON: Guadalupe Marquez.

7 VENIREPERSON: I have a 5-year-old to pick up
8 at 11:00.

9 THE COURT: Everyday?

10 VENIREPERSON: Yes, I have to get off of work
11 and pick him up and take him to the day care.

12 THE COURT: Don't have anybody that could do
13 it for the short period of time that you're down here as a
14 juror?

15 VENIREPERSON: No. And I can't read and write
16 100 percent. I do understand.

17 MR. DAVIS: We'll agree.

18 THE COURT: You are excused. Here, take this.
19 (Venireperson brought forward.)

20 THE COURT: Good morning.

21 VENIREPERSON: Good morning, Judge.

22 THE COURT: What is your name, please?

23 VENIREPERSON: Virginia Boyd.

24 THE COURT: Yes, ma'am.

25 VENIREPERSON: Back in 1994 my younger brother

1 was killed by the police in Grapevine, Texas, and I feel like
2 in some way my feelings concerning the police changed at that
3 point because I do feel like they may --

4 MR. DAVIS: Judge, we'll agree.

5 THE COURT: Thank you. You are excused.

6 VENIREPERSON: Thank you.

7 (Venireperson brought forward.)

8 THE COURT: Good morning.

9 VENIREPERSON: Good morning.

10 THE COURT: What is your name?

11 VENIREPERSON: Henrick Gonzales.

12 THE COURT: Henrick Emmanuell Gonzales.

13 VENIREPERSON: And I was going to ask if I can
14 be excused. I don't know how to read the English language.
15 I don't know how to write.

16 THE COURT: Literacy. Read and write.

17 MR. BYCK: We'll agree.

18 MR. DAVIS: We'll agree.

19 THE COURT: You're excused.

20 VENIREPERSON: Thank you.

21 (Venireperson brought forward.)

22 THE COURT: Good morning, how are you? Just a
23 minute. Let's get your name first for the court reporter.

24 Turahn Dorsey.

25 VENIREPERSON: I have a 74-year-old mother

1 that is in Richardson with complete knee surgery which was
2 done on Tuesday and in rehabilitation, and I am now also
3 taking care of 90-year-old grandmother at the house.

4 THE COURT: Place full?

5 VENIREPERSON: Place full.

6 MS. LITTLE: At least you've got longevity
7 going for us.

8 MR. DAVIS: We'll agree.

9 THE COURT: You are excused. Thank you very
10 much, Mr. Dorsey.

11 (Venireperson brought forward.)

12 THE COURT: Good morning.

13 VENIREPERSON: Hi, how are you today?

14 THE COURT: Doing fine. Get your name for the
15 court reporter, please, to begin with.

16 Lisa Gonzales.

17 VENIREPERSON: I can't do this. I had a
18 friend of mine recently murdered, and I can't do this. I
19 can't give a fair judgment on anything.

20 MS. LITTLE: We'll agree.

21 VENIREPERSON: I'll also tell you, the lady
22 next to me, she wanted me to tell you she can't speak
23 English.

24 MR. DAVIS: You just got your pay back there.

25 (Venireperson brought forward.)

1 THE COURT: You're name?

2 (Paper handed to Judge.)

3 Norma Rivas.

4 You're not a citizen of the United States?

5 VENIREPERSON: No.

6 THE COURT: What is your country of origin?

7 MS. LITTLE: Where are you from?

8 Let me shout a little louder.

9 THE COURT: You are excused.

10 (Venireperson brought forward.)

11 THE COURT: What's your name, first?

12 VENIREPERSON: Cecelia Moxley.

13 THE COURT: Whoops. Hang on to that for right
14 now.

15 VENIREPERSON: I have a minor medical
16 disability. Basically I have Texas Workman's Compensation
17 order to doctor's appointment Monday. Also, I have a
18 incontinence.

19 MR. DAVIS: Is it a chronic condition?

20 VENIREPERSON: Yes.

21 MR. DAVIS: We'll agree.

22 MS. LITTLE: We will agree.

23 THE COURT: You are excused. Thank you.

24 (Venireperson brought forward.)

25 THE COURT: Good morning.

1 Is your name Chu, C-h-u, Collins? What is your
2 circumstance?

3 VENIREPERSON: I'm not much understand.

4 THE COURT: You can't read and write English?

5 VENIREPERSON: This one I can do that, but I
6 don't understand these things.

7 THE COURT: Either side have any objection to
8 her being excused?

9 MR. DAVIS: We'll agree.

10 MS. LITTLE: We'll agree.

11 MR. BYCK: Thank you.

12 THE COURT: You are excused.

13 (Venireperson brought forward.)

14 VENIREPERSON: My problem is --

15 THE COURT: Just a second. Javier Mora,
16 M-o-r-a.

17 All right. What is your circumstance?

18 VENIREPERSON: My circumstance is my English
19 is a problem.

20 MR. DAVIS: We'll agree.

21 MS. LITTLE: Okay.

22 THE COURT: You are excused. Thank you.

23 (Venireperson brought forward.)

24 THE COURT: Sir?

25 VENIREPERSON: I don't know if I'm supposed to

1 take my hat off or not.

2 THE COURT: Just a moment. Let's get your
3 name first. This is Bruce Alan Spaulding,
4 S-p-a-u-l-d-i-n-g. What's the circumstance, Mr. Spaulding?

5 VENIREPERSON: Now, I have medical
6 appointments -- I will have medical appointments on the 13th,
7 19th, and -- and I have partial disability in that I have an
8 artificial hip replacement joint and it keeps me from getting
9 up and down easily. Not more down, but up.

10 MS. LITTLE: We'll agree.

11 MR. DAVIS: We'll agree.

12 THE COURT: You are excused. Thank you.

13 (Venireperson brought forward.)

14 VENIREPERSON: How are you doing?

15 (Paper handed to Judge)

16 THE COURT: Calvin Ray Delk.

17 Mr. Delk, what is your circumstance, please?

18 VENIREPERSON: Well, this is very complicated
19 questions.

20 THE COURT: Uh-huh.

21 VENIREPERSON: I feel the way I look at it,
22 it's my belief and everything like that -- my mind won't be
23 on this here.

24 MR. DAVIS: We'll agree.

25 THE COURT: You are excused.

1 MS. LITTLE: Agree.

2 (Venireperson brought forward.)

3 THE COURT: Good morning.

4 Marilyn Arnetta Bolton.

5 VENIREPERSON: Uh-huh.

6 THE COURT: What's your circumstances?

7 VENIREPERSON: Well, I have a lung disease and
8 I have to do breathing, puffing things three or four times a
9 day. Right now I'm doing good, but I probably wouldn't,
10 so --

11 MR. DAVIS: The State agrees.

12 MR. BYCK: We'll agree.

13 THE COURT: You are excused.

14 VENIREPERSON: Thank you.

15 THE COURT: Next.

16 (Venireperson brought forward.)

17 THE COURT: This is Anita Oliver.

18 What's your circumstances?

19 VENIREPERSON: Well, I have family members in
20 prison that's been there --

21 MR. DAVIS: We'll agree.

22 MR. BYCK: We'll agree.

23 THE COURT: You are excused.

24 (Venireperson brought forward.)

25 THE COURT: Good morning. Get your name,

1 first, before we begin.

2 Sanya O-d-u-m-u-s-u.

3 VENIREPERSON: M-o-s-u.

4 THE COURT: M-o-s-u.

5 VENIREPERSON: M-o-s-u.

6 THE COURT: What is your circumstance?

7 VENIREPERSON: Well, I would not be fair
8 because I am an accountant and they will not pay me because I
9 am a contractor, so --

10 MR. DAVIS: We'll agree.

11 MR. BYCK: We agree.

12 MS. LITTLE: We agree.

13 THE COURT: You are excused.

14 MS. MILLER: He was a five.

15 (Venireperson brought forward.)

16 THE COURT: Martha Lee Murphy.

17 What is your circumstance, Ms. Murphy?

18 VENIREPERSON: I have a 6th grade education,
19 and I don't understand a lot of this.

20 MS. LITTLE: We'll agree.

21 MR. DAVIS: We agree.

22 THE COURT: You are excused.

23 MR. BYCK: Thank you, ma'am.

24 (Venireperson brought forward.)

25 THE COURT: Larry Donnell Lockett.

1 What is your circumstance, Mr. Lockett?

2 VENIREPERSON: I have been convicted of a
3 felony.

4 THE COURT: Of what?

5 VENIREPERSON: (Inaudible.)

6 THE COURT: Did you go to the penitentiary?

7 VENIREPERSON: Yes, sir. Been about 14 years
8 now.

9 THE COURT: Have you been pardoned?

10 VENIREPERSON: No, sir. Judge Keasler was the
11 Judge at the time.

12 THE COURT: You are disqualified. You are
13 excused. Thank you.

14 MR. BYCK: Thank you, sir.

15 (Venireperson brought forward.)

16 THE COURT: Good morning. How are you, sir?

17 This is Leemon Byrd, Jr., B-y-r-d. What is your
18 circumstances?

19 VENIREPERSON: I don't know how to fill out
20 the application. I don't read and write.

21 MR. DAVIS: We'll agree.

22 MS. LITTLE: Agree.

23 THE COURT: You are excused.

24 VENIREPERSON: Thank you.

25 MR. BYCK: Thank you, sir.

1 (Venireperson brought forward.)

2 THE COURT: Good morning.

3 VENIREPERSON: Good morning. Can I ask you a
4 couple of --

5 THE COURT: Let's get your name. No problem,
6 it's not your fault.

7 This is Christine A. Henderson.

8 Yes, ma'am?

9 VENIREPERSON: Did I say something -- or hear
10 you say something about serving within -- if you were on a
11 jury within the last five years?

12 THE COURT: No.

13 VENIREPERSON: I misunderstood.

14 THE COURT: If you have a -- if you have
15 served as a petit juror in the -- When did you serve?

16 VENIREPERSON: I think it's been about three
17 years ago.

18 THE COURT: Yeah, no problem with that. Stay
19 with us. You're fine.

20 VENIREPERSON: Okay.

21 (Venireperson brought forward.)

22 THE COURT: Good morning.

23 VENIREPERSON: Hi, Your Honor.

24 THE COURT: Get your name.

25 VENIREPERSON: It's Mike McBrayer.

1 And after hearing what you told us this morning, I'm
2 scheduled to be in Japan for 10 days starting next week.

3 THE COURT: No problem. We'll work with you.

4 VENIREPERSON: Okay. That's fine. I just
5 wanted to make sure. I've had a cruise planned for months.

6 THE COURT: No problem. We'll work with you.
7 I can't afford to go to Japan.

8 (Venireperson brought forward.)

9 THE COURT: Rosa Wilson Davis.

10 Yes, ma'am.

11 VENIREPERSON: I'm an uncontrolled diabetic.
12 My husband is going blind, and I really need to stay with
13 him.

14 MR. DAVIS: We'll agree.

15 MS. LITTLE: We'll agree.

16 THE COURT: You are excused. Thank you.

17 VENIREPERSON: Thank you. What do I do with
18 this?

19 THE COURT: Give it to my bailiff. Thank you.

20 (Venireperson brought forward.)

21 THE COURT: Good morning.

22 VENIREPERSON: Good morning, Your Honor.

23 THE COURT: Get your name first and then we'll
24 start. John Charles Broad.

25 VENIREPERSON: Your Honor, I was just on a

1 jury a year and a half ago in the federal court building. I
2 wanted to let you know that my wife and I are going to Europe
3 in the early part of June on a cruise, and under these
4 circumstances --

5 THE COURT: When in June?

6 VENIREPERSON: June 1st through the 12th.

7 MS. MILLER: How wonderful.

8 THE COURT: Can you take a few of us with
9 you? You are excused. You are excused.

10 VENIREPERSON: Thank you, Your Honor.

11 MS. BALIDO: Can we be the mouse in your
12 pocket?

13 (Venireperson brought forward.)

14 THE COURT: Let's give this to the court
15 reporter, first.

16 Carla Ann Braziel. What is your circumstance?

17 VENIREPERSON: What do you mean?

18 THE COURT: Why did you come up? Why did you
19 want to talk to us?

20 VENIREPERSON: I was bringing this paper. Do
21 I need to bring this?

22 THE COURT: Just hand it over there, and we'll
23 talk to you later.

24 MS. MILLER: She was a five.

25 THE BAILIFF: Was she excused?

1 THE COURT: No.

2 (Venireperson brought forward.)

3 VENIREPERSON: I haven't completed this.

4 THE COURT: Did you want to talk to us about
5 something? Doretha Faye Germany.

6 Doretha Germany.

7 VENIREPERSON: You mentioned the idea if you
8 had a returned check or anything and I did go to -- over Zang
9 about it, so I did talk to the Judge about it. So --

10 MS. LITTLE: JP court.

11 THE COURT: Either side have any objection to
12 her being excused?

13 MR. DAVIS: We'll agree.

14 MR. BYCK: We agree.

15 THE COURT: You are excused.

16 (Juror excused.)

17 THE COURT: Ma'am --

18 VENIREPERSON: Hi.

19 THE COURT: It's Genether Spivery. What is
20 your circumstance?

21 VENIREPERSON: Well, I had a family member
22 that was murdered, and I -- I just -- I wanted the person to
23 really suffer and stay in prison and not go through a death
24 penalty, so --

25 MR. DAVIS: Judge, we'll agree.

1 MS. LITTLE: We'll agree. We agree.

2 THE COURT: You are excused. Okay.

3 (Venireperson brought forward.)

4 THE COURT: This is Mr. Micheal Dewayne Culton
5 C-u-l-t-o-n.

6 Mr. Culton, what's your circumstance?

7 VENIREPERSON: I don't think I would be good
8 because I'm a foster parent and I'm constantly getting kids
9 everyday. Before I came here, I was supposed to get one this
10 weekend, so I don't think I would be able to do it.

11 MR. DAVIS: We'll agree.

12 MR. BYCK: Okay. Agree.

13 THE COURT: You are excused.

14 (Venireperson brought forward.)

15 THE COURT: Good morning.

16 VENIREPERSON: See, I started --

17 THE COURT: Just a second, we'll get to you.
18 This is Lydia, middle initial R, surname Garcia.

19 VENIREPERSON: Okay. I started filling it
20 out, but I don't understand a lot of it. And another thing
21 that I was -- I wanted to ask, like I have an elder person
22 that I take for therapy and stuff and to the doctor and take
23 myself to therapy. Am I going to be still into this?

24 MR. DAVIS: The State agrees.

25 MS. LITTLE: We agree.

1 THE COURT: You are excused.

2 Sir --

3 (Venireperson brought forward.)

4 THE COURT: Just a moment. Harley, middle
5 initial Z, surname Cunniff, two N's, two F's. What's your
6 circumstance, sir?

7 VENIREPERSON: I've got diverticulitis.
8 Sometimes that causes diarrhea. I also have two artificial
9 legs, knees, and my back is not real good. I don't think I
10 could sit in a courtroom all day.

11 MR. DAVIS: We'll agree.

12 MR. BYCK: We'll agree.

13 THE COURT: You're excused. Thank you.

14 MR. BYCK: Thank you, sir.

15 THE COURT: Sam, excused.

16 (Venireperson brought forward.)

17 VENIREPERSON: Hi.

18 THE COURT: Good morning.

19 VENIREPERSON: Good morning.

20 THE COURT: Just a second.

21 This is Edward Aleman, A-l-e-m-a-n.

22 VENIREPERSON: I don't have any problems
23 serving as juror, but if it comes down to reading and writing
24 correctly, I cannot do that. My spelling is not very good.

25 MR. DAVIS: We'll agree.

1 MS. LITTLE: You can't read the
2 questionnaire?

3 VENIREPERSON: Well, I can, but there are
4 some words --

5 MS. LITTLE: That you don't know?

6 VENIREPERSON: I don't understand.

7 MS. LITTLE: We'll agree.

8 THE COURT: You are excused. Thank you.

9 VENIREPERSON: Thank you.

10 THE COURT: Sam, excused.

11 (Venireperson brought forward.)

12 VENIREPERSON: Is this one of those that she
13 doesn't know if it makes a difference or not?

14 THE COURT: Just a minute.

15 This is Linda Mae Weld, W-e-l-d.

16 VENIREPERSON: Linda Mae Weld had her house
17 burglarized a year and a half ago, checks stolen. Wal-Mart
18 has filed because they used -- not only my checks, but my
19 passport. I had to go to JP court and sign my name about 150
20 times and claim this as forgery. I never heard one thing or
21 the other, so I don't know.

22 MS. LITTLE: You would have heard.

23 MR. BYCK: Yeah, they're real good about
24 getting back to you on things like that.

25 VENIREPERSON: Well, when you don't hear, it's

1 sort of like --

2 THE COURT: Stay with us. You'll hear from
3 us.

4 (Venireperson brought forward.)

5 THE COURT: Next.

6 VENIREPERSON: I'm --

7 THE COURT: Just a minute. We need to get
8 your name again for the record.

9 Michael Alan White.

10 Yes, sir.

11 VENIREPERSON: I'm a friend with Tom D'Amore.
12 He's with the District Attorneys Office. Does that have an
13 effect on whether I could be a juror or not?

14 THE COURT: You claim friendship with Mr.
15 D'Amore?

16 VENIREPERSON: I play soccer with him.

17 MS. MILLER: Oh, you do?

18 THE COURT: No problem.

19 VENIREPERSON: That's no problem. Okay.

20 Thank you.

21 (Venireperson walks away.)

22 MS. MILLER: Other than he was a one --

23 MS. LITTLE: One?

24 (Venireperson brought forward.)

25 VENIREPERSON: Excuse me. You said about the

1 circumstance a while ago. Okay. I have a reading
2 disability.

3 THE COURT: A reading disability?

4 VENIREPERSON: You brought it up a little
5 while ago about reading, so --

6 THE COURT: How far did you go in school?

7 VENIREPERSON: I went to 12, but I was in
8 special education, but I was slow.

9 THE COURT: Carla Braziel.

10 MS. LITTLE: You filled out the questionnaire
11 okay, though, didn't you?

12 VENIREPERSON: Yeah, the basic, what I can do.

13 MS. LITTLE: Were you able to fill out
14 everything?

15 VENIREPERSON: The basic, but as far as
16 writing in what you need to -- the reason on something.

17 MS. LITTLE: We'll agree.

18 THE COURT: You are excused. Thank you.

19 MR. DAVIS: She already turned it in.

20 (Venireperson brought forward.)

21 THE COURT: Just a minute. Diana Gail Bandy,
22 B-a-n-d-y.

23 Yes, ma'am.

24 VENIREPERSON: I did pay a fine for writing a
25 bad check before. And I didn't know if I would be

1 disqualified or not.

2 THE COURT: Theft conviction?

3 VENIREPERSON: Yeah.

4 MS. LITTLE: We'll agree.

5 THE COURT: You are excused. Thank you.

6 Sam, she is excused.

7 (Venireperson brought forward.)

8 THE COURT: Yes, sir.

9 VENIREPERSON: Hi.

10 THE COURT: Wait a minute. Get your name
11 first for the court reporter.

12 Richard Melvin Dishman.

13 VENIREPERSON: Yeah, it was like 25 years ago,
14 26 years ago, I had a misdemeanor.

15 THE COURT: What?

16 VENIREPERSON: It was for lewd contact.
17 That's what they called it. That's what it was called.

18 THE COURT: Doesn't disqualify you.

19 VENIREPERSON: I just wanted to make sure.
20 Fine.

21 (Recess taken.)

22 VENIREPERSON: My dad has pancreatic cancer.
23 He's in the hospital.

24 MS. MILLER: Sorry to hear that.

25 We can agree. She is a four, Judge.

1 MS. BALIDO: We can agree.

2 THE COURT: You are excused. Thank you.

3 R-u-b-a-r-t-s.

4 (Recess taken.)

5 THE COURT: I need your name.

6 VENIREPERSON: Vivian Fields Pruitt.

7 THE COURT: Vivian Fields Pruitt. What is
8 your circumstance?

9 VENIREPERSON: I'm a heart patient, and this
10 kind of thing just gets the best of me. I've got a son that
11 has a -- I have a son that got killed, but it wasn't a
12 murder. He was killed on his motorcycle, but then after that
13 I've had two heart attacks. Soon it will be 11 years, and
14 this kind of thing just gets on me. I'm under the doctor.

15 MS. BALIDO: Are you on medication?

16 VENIREPERSON: Oh, yes, I have high blood
17 pressure, bad. If you need me to, I can drop -- I got some
18 out in the car -- some of my medications out in the car.

19 THE COURT: Oh, we trust you.

20 VENIREPERSON: I go to Parkland.

21 MR. BYCK: We'll agree.

22 MS. MILLER: The State will agree.

23 MS. BALIDO: Defense will agree.

24 THE COURT: You are excuse. Thank you very
25 much.

1 VENIREPERSON: I appreciate it. If there is
2 anything else I can do. Maybe stand on the outside and not
3 in here and I'll be all right. Thank you.

4 (Recess of proceedings)

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Reporter's Certificate

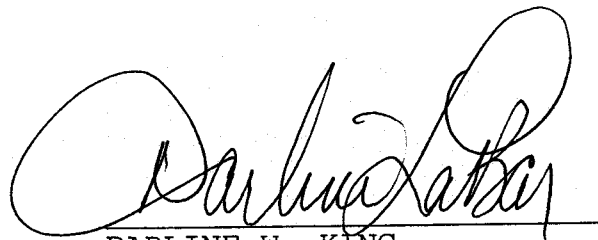
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the
194th Judicial District Court, in and for Dallas County,
Texas do hereby certify that the foregoing volume constitutes
a true, complete and correct transcript of all portions of
evidence and other proceedings requested in writing by
counsel for the parties to be included in the statement of
facts, in the above styled and numbered cause, all of which
occurred in open court or in chambers and were reported by
me.

I further certify that this transcription of the
record of the proceedings truly and correctly reflects the
exhibits, if any, offered by the respective parties.

Witness my hand this the 3rd day of October, A.D.,
2001.



DARLINE W. KING
Official Court Reporter
194th Judicial District Court
Dallas County, Texas
(214) 653-5803

Certification No. 1064 Expires December 31, 2002

REPORTER'S RECORD

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VOLUME 4 OF 65 VOLUMES

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT
VS. : DALLAS COUNTY, TEXAS
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

PRETRIAL HEARING

FILED IN
COURT OF CRIMINAL APPEALS

DEC 5 2001

A P P E A R A N C E S:

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FOR THE STATE OF TEXAS;

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MS. JENNIFER BALIDO, Attorney at Law, SBOT # 10474880
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Dallas, Texas 75207
Phone: 214-653-9400
FOR THE DEFENDANT.

On the 8th day of March, 2001, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable F. Harold Entz, Jr.,
Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by machine shorthand, computer
assisted transcription.

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P R O C E E D I N G S

THE COURT: This hearing is being conducted in open court, Cause Number F00-02424-NM, styled the State of Texas versus Jedidiah Isaac Murphy.

The State is represented by the Honorable Greg Davis, the Honorable Mary Miller.

Lead counsel for the accused, the Honorable Jane Little, is present in court with her co-counsel, the Honorable Michael Byck, Jennifer Balido.

As is required by the Texas Code of Criminal Procedure, Jedidiah Isaac Murphy is in court during this pretrial hearing and will be at all times absent my dictating the contrary into the record.

The State prepared to proceed in the hearing?

MR. DAVIS: The State's ready, Your Honor.

THE COURT: Defense prepared to proceed?

MS. BALIDO: The defense is ready, Your Honor.

THE COURT: It's my understanding the request for a hearing was occasioned by the defense; am I correct?

MS. BALIDO: At first, yes, Judge, and then agreed to by the State.

THE COURT: All right.

MS. BALIDO: Judge, we would like to -- before we commence with the individual voir dire on Monday, we would like for you to consider our voir dire motions that we have

1 previously filed.

2 First, beginning with the motion to order the State
3 to decide whether to make a challenge for cause or peremptory
4 strike before the defendant must decide whether to make a
5 challenge for cause or peremptory strike, which I believe is
6 about page 135 in your motions.

7 THE COURT: State care to be heard on this?

8 MR. DAVIS: Well, Judge, I think that's -- I
9 think the Court knows you have discretion in that matter as
10 to whether you will require us to make both of those choices
11 prior to the defense making a choice, and we'll leave that to
12 your discretion.

13 THE COURT: Defense have anything further to
14 offer before the Court comments?

15 MS. BALIDO: No, Judge.

16 THE COURT: The Court will proceed with regard
17 to the number of peremptory challenges allotted to each side
18 as follows: The State will be given, pursuant to the
19 requirements of the Code of Criminal Procedure, 15 peremptory
20 challenges. Though the statute grants the defense the right
21 to 15, out of an abundance of trial court and, if necessary,
22 appellate court evaluation of the Court's exercise of the
23 challenges for cause, the Court will grant the defense 18
24 challenges. We will proceed to qualify 48 --

25 MR. DAVIS: I'm sorry, Your Honor, I'm not

1 agreeing to this portion.

2 THE COURT: I understand.

3 MR. DAVIS: Okay. And what I -- as I
4 understood the defense, they've asked you to look at their
5 motion to order the State to decide whether to make a
6 challenge for cause for peremptory strike before the
7 defendant's takes a strike. That I have no objection to.

8 THE COURT: That part is granted.

9 MR. DAVIS: Yes, sir. If we're talking about
10 another motion as to --

11 THE COURT: I thought we were just kind of
12 collectively taking them all up.

13 MS. BALIDO: There's a separate motion on that
14 too, Judge.

15 THE COURT: The State will be required to
16 exercise its peremptory challenges prior to the State -- I
17 mean, prior to the defense.

18 MS. BALIDO: Judge, then I guess then we need
19 to go ahead and get into the issue as to -- which is our
20 request to utilize peremptory challenges following the
21 examination of the entire venire.

22 THE COURT: Mr. Davis, I understand the State
23 wishes to be heard on that.

24 MR. DAVIS: Yes, sir, we do. I filed a
25 response, and in that response I've cited case law pursuant

1 to Busby v. State and Grijalva v. State. It's clear, as the
2 courts have said, that Article 35.13 controls in this matter,
3 that the statutory procedure would require that the
4 challenges be made at the time that that juror is questioned.
5 The Court has stated that that is a provision that may be
6 waived by the parties, but in this case the State is not
7 waiving the provisions of Article 35.13. And for that reason
8 we're asking that you deny the defendant's request.

9 And in Grijalva the Court clearly stated it's clear
10 in a capital case each party must exercise any peremptory
11 challenge at the time the particular prospective juror has
12 been qualified. The parties may not wait until all
13 prospective jurors have been examined before exercising
14 peremptory challenges as is allowed in non-capital cases.
15 And so -- again, the State is not going to waive the
16 provisions of article 35.13.

17 THE COURT: The Court will hold its ruling
18 until Monday morning.

19 MS. BALIDO: Judge, can I respond to the
20 State's argument?

21 THE COURT: You may.

22 MS. BALIDO: Judge, there's a new case that's
23 come out of the Texas Court of Appeals, Tong versus State, 25
24 S.W.3d 707. In that case the Court of Criminal Appeals --

25 THE COURT: 25 --

1 MS. BALIDO: S.W.3d, 707.

2 THE COURT: Yes.

3 MS. BALIDO: In that case they were talking
4 about different jury issues, but in a footnote -- Footnote
5 Number 1 they went back and they -- and they addressed this
6 issue. I think that the cases that Mr. Davis relies upon for
7 the State in saying that both parties can waive this issue, I
8 think his reliance on that -- on those cases to say that the
9 State can waive this or object to it is misplaced basically
10 because the cases that he relies upon, the State -- the Court
11 says that the defense failed to object and so therefore
12 cannot gripe later. And therefore it's inferring from that
13 that both parties have the right to object or waive that.
14 And that's not exactly what those cases say.

15 Further, the Court -- the Court of Criminal Appeals
16 has said that 35.13 is not mandatory. It is -- it's not an
17 absolute requirement, and, in fact, the case that the State
18 cites, Busby versus State, Busby held that although the
19 practice varies from the statutory procedure for capital
20 cases, the Court found that the procedure controlling the
21 order and timing of the exercise of peremptory strikes --
22 challenges is not an absolute requirement and therefore
23 strict adherence to the law is not required.

24 In Tong, the new case, they looked back and they --
25 they looked back at a case called Sanne, which is S-a-n-n-e,

1 versus State, 609 S.W.2d 762, which is a 1980 case, which had
2 basically since 1980 been rejected by the Court of Criminal
3 Appeals. But the Court has now returned to that case and
4 said that the issues regarding the way that this is done in
5 capital murder cases, that you strike right after individual
6 voir dire, in relationship to the way that it's done in
7 non-capital cases where you look at the entire voir dire --
8 the entire venire, that there may be some constitutional
9 issues involved that the Court of Criminal Appeals is
10 concerned about. And that they even say in the footnote in
11 Tong may have some merit. One being that it violates equal
12 protection of the laws under the United States Constitution
13 and Article 1, Section 3, of the Texas Constitution, that it
14 violates due process under the 14th Amendment and the 5th
15 Amendment and the 6th Amendment of the United States
16 Constitution. And it violates the due course of law
17 provision Article 1, Section 10, of the Texas Constitution.

18 And we would -- if you find that we are not to
19 exercise our peremptory strikes after the entire venire has
20 been looked at, we would object under those reasons and for
21 the reasons under Tong versus State.

22 Most of the time, whether the State finds against
23 the defense in this sort of thing, it's because they can't
24 show harm. And we would say that harm can be shown, that we
25 cannot effectively use strikes without seeing the makeup of

1 the panel.

2 THE COURT: As a whole?

3 MS. BALIDO: As a whole. And also that it is
4 difficult for us and the Court to see whether or not the
5 State is using their peremptory strikes in a Batson type
6 manner, for either race, gender, or any other kind of pattern
7 that can be shown after the peremptory strikes are seated for
8 the whole panel itself. It also comes into making note of
9 disparate questioning and where those types of things are
10 concerned under the Batson cases. So we would just stand on
11 our motion asking to use our challenges after the following
12 venire, plus the cases that we brought to your attention
13 here.

14 THE COURT: Will reread the cases both the
15 State and defense have cited. I'll make my determination
16 prior to the individual questioning of the first juror
17 Monday, I guess, it will be afternoon.

18 Next matter.

19 MS. BALIDO: Oh, Judge, we also had a motion
20 to videotape the individual voir dire.

21 THE COURT: State's position?

22 MR. DAVIS: I don't have any objections to
23 it. I think that's within the discretion of the Court,
24 though.

25 THE COURT: Granted. So the defense will make

1 arrangements for that?

2 MS. BALIDO: Can we --

3 THE COURT: Parenthetically I assume in light
4 of the debate that is being occasioned by the Commissioners
5 Court with regard to certain expenditures by the District
6 Judges of Dallas County with regard to a totally related
7 matter, have you visited this issue with the Dallas County
8 Commissioners Court, Ms. Balido?

9 MS. BALIDO: No, we have not, Judge. But --

10 THE COURT: I was not saying you have to, and
11 the Court is not bound by their fiscal decision, but I was
12 just curious, knowing your political closeness with a number
13 of members of that court.

14 MS. BALIDO: I haven't brought it up to them,
15 Judge.

16 THE COURT: I'm not surprised.

17 MS. BALIDO: Additionally, Judge, the next, I
18 guess, in order is Defendant's motion regarding individual
19 jurors challenge for cause in voir dire proceedings.
20 Basically we're asking, which is about on page 139 -- we're
21 asking that any submission for cause be held outside the
22 presence and observation of the juror and outside the hearing
23 and the awareness of the juror.

24 THE COURT: I assume the State has no
25 objection to that?

1 MR. DAVIS: The State has no objection.

2 THE COURT: Been the practice of this court,
3 and absent any statutory or case law to the contrary, upon
4 the conclusion of the individual examination, the bailiffs
5 assigned to this court, Ms. Madore, Mr. Rees, will excuse the
6 juror from the courtroom. I will thereafter give each side
7 any necessary reasonable time to counsel with their
8 co-counsels with regard to matters dealing with a challenge
9 for cause. Outside the presence of the individually
10 questioned juror, I will first ask the State if they have a
11 challenge for cause, will make, if necessary, a ruling upon
12 their challenge. If I find their challenge to be sustained,
13 it's over. If, however, they neither challenge the juror for
14 cause or I overrule their challenge, I will then ask the
15 State -- I mean, the defense, excuse me, as to their position
16 with regard to a challenge for cause. If I sustain the
17 defense challenge for cause, it's over. If I overrule the
18 defense challenge or there is no objection, that person will
19 remain a qualified juror. And depending upon my ruling, we
20 will then go back to the State and ask them if they wish to
21 exercise their peremptory challenge and then the defense.
22 But all of this will be done outside the prospective juror's
23 presence whether or not that individual decides to go to the
24 former system, if you will, and exercise -- have peremptory
25 challenges exercised immediately then or if not, if they

1 remain under consideration, bring the jury back in and tell
2 that individual juror he or she, as the gender of the juror
3 may be, whether or not they remain under consideration and
4 give them further instructions.

5 Off the record.

6 (Discussion off the record.)

7 MS. BALIDO: Judge, I think the next motion is
8 motion to question veniremen regarding mitigating evidence.

9 THE COURT: Granted. I think it is
10 ineffective counsel for your failure to do so. And if you
11 had not done that, I would have gone on the record to ask
12 if -- for strategic reasons or otherwise why you were not
13 doing it. However, we do not have a racial disparity, do we,
14 between the victim and --

15 MS. BALIDO: No.

16 THE COURT: We don't have that issue then?

17 MS. BALIDO: And our next motion is motion to
18 question the veniremen regarding the burden of proof on
19 mitigation issues.

20 MR. DAVIS: We certainly object to that
21 because there is no burden of proof on the State of Texas
22 with regard to the mitigation evidence. That would be a
23 misstatement of law. It would be very misleading to any
24 prospective juror to question them along those lines.

25 THE COURT: Defense request is denied.

1 MS. BALIDO: Our next motion is motion to voir
2 dire veniremen on victim character impact testimony.

3 MR. DAVIS: Again, our objections are as
4 stated in our response. First of all, if you question them
5 with regards to either guilt/innocence or to future
6 dangerousness, again, I believe the courts have held
7 consistently with the issue of mitigation -- the issue of
8 victim impact character testimony goes on to mitigation
9 issue. It's not relevant to the issue of guilt/innocence.
10 It's not relevant to the issue of future dangerous. Again,
11 it would be a misstatement of the law to imply it would
12 somehow be relevant. I would be misleading and confusing to
13 any prospective jurors. That type of testimony, as I
14 understand it, is relevant only to the mitigating issue.

15 THE COURT: Per Payne versus Tennessee, the
16 defense request is denied.

17 MS. BALIDO: Judge, can I just be heard a
18 little bit on -- with Payne since it's not really a Texas
19 case dealing with the Texas special issues? Basically what
20 our argument is, is that we have given notice to the State or
21 asked for notice from the State as to any character impact or
22 victim impact evidence or victim character evidence that they
23 plan to introduce, be it either in their case in chief or on
24 punishment or in response to any mitigation that we bring
25 forward. We don't know about that at this time, other than

1 what is part and context of the offense. Under Article 1,
2 Section 10, of the Texas Constitution the parties are given
3 wide latitude about questioning the jurors about anticipated
4 facts that might be brought into the case. And it's
5 important that we uncover potential bias or prejudice that
6 may arise because of anticipated facts without -- without
7 getting the juror to agree as to what their verdict would be
8 or how they would be --

9 THE COURT: Pre-committing them?

10 MS. BALIDO: Yes. We wouldn't commit them to
11 anything. But it's -- and courts have held in Noonfield
12 versus State, 808 Southwest 2d 482, a Texas Court of Criminal
13 Appeals case, that these sorts of questions framed in the
14 manner of if the evidence -- you know, if you heard evidence
15 as to this, could you be fair and impartial. That way you're
16 not committing the jurors to anything, but you're trying to
17 weed out any kind of bias or impartiality as to certain
18 anticipated facts that may come before them.

19 THE COURT: May I ask the defense prior to the
20 commencement of individual voir dire to make a proffer of the
21 types of specific questions they would like to ask a
22 prospective individual juror, and I'll make my determination
23 at that point?

24 MS. BALIDO: Okay. There are some listed in
25 the motion, but I'll also kind of flush that out a little

1 bit. And that's on page 145, Judge. That was that motion.

2 THE COURT: Thank you.

3 MS. BALIDO: The next motion is motion for
4 discovery of information regarding prior jury service. And
5 that is on page 148 of your handbook -- 149. I'm sorry,
6 Judge.

7 THE COURT: Interesting 1997 case response
8 from the State. Do you wish to be heard, Mr. Davis?

9 MR. DAVIS: We will object to that under the
10 grounds of Martin v. State, Texas Court of Criminal Appeals
11 case. To my knowledge, that has not been overruled. That is
12 privileged information with regard to discovery. And we're
13 simply going to object to that on those grounds. There has
14 been no provision, no case law that I'm aware of that would
15 destroy the privilege that we have with regards to our work
16 product.

17 THE COURT: I have intended, though my trial
18 schedule this week has not permitted me, to discuss this
19 matter with my staff attorneys. Let me have the benefit, if
20 I may, Monday morning of visiting this issue with them.

21 MR. DAVIS: Yes, sir.

22 THE COURT: Before I confer with them, let me
23 tell you some of the ambivalence I feel on both sides, and I
24 don't know which side I'm coming down on. On one hand, I
25 very, very much obviously respect the work product principle,

1 on either side. The same token, I am extremely mindful of
2 the two dozen plus United States Supreme Court cases in which
3 they say that death is different. We all realize that there
4 is a different due process body of law as relates to capital
5 litigation by virtue of the nature of the possible
6 punishment.

7 So I'm somewhat driven by those two countervailing
8 arguments in my own mind. And let me have the benefit of
9 counsel with my staff attorneys and I'll let both sides know
10 prior to the questioning of the first juror.

11 MR. DAVIS: Yes, sir.

12 MS. BALIDO: Judge, our next motion, which is
13 on page 178 in your book, is defendant's motion for
14 individual voir dire.

15 THE COURT: Granted.

16 MS. BALIDO: We've taken care of the next
17 motion and the next motion. And then the motion on page 183
18 of your book is motion to voir dire on parole law.

19 THE COURT: That is the 40 years?

20 MS. BALIDO: Yes, sir.

21 THE COURT: I have already mentioned that to
22 them last Friday. I will again mention it to them before
23 individual questioning. Granted. Plus, there is a provision
24 Code of Criminal Procedure that it must be contained in the
25 charge.

1 Off the record.

2 (Discussion off the record.)

3 THE COURT: Back on the record.

4 MR. DAVIS: We have the State's Motion in
5 Limine. A lot of these issues do deal with voir dire.

6 THE COURT: All right.

7 MR. DAVIS: Issue Number 1 would be of any
8 statement by the defense that the term "society" as included
9 in Special Issue Number 1 includes only prison populations.
10 I think the case law is pretty clear that it can include
11 prison, as well as non-prison populations.

12 MS. BALIDO: Can I be heard on that one,
13 Judge?

14 THE COURT: Sure.

15 MS. BALIDO: Judge, specifically the case that
16 Mr. Davis has cited is a 1995 case that was instituted before
17 the parole law being before the jury. And so the Smith
18 versus State case specifically based its ruling on the fact
19 that parole is not a consideration for a jury in a sentencing
20 phase and so therefore anything about inside prison
21 population and outside prison population in the definition of
22 society -- and we say they left it up to the legislature to
23 change that. And the legislature did change that and allows
24 parole to be talked about with the jury. And we would argue
25 that that would then turn all the cases like Smith on their

1 head because they are all based on the fact that you can't
2 talk about parole, but now that you can talk about parole.
3 We say that the State would have to prove that Jedidiah
4 Murphy would be actually out in society and would be a
5 continuing threat to society at that point.

6 THE COURT: Defense objection is overruled.

7 State request is granted.

8 MR. DAVIS: Number 2, again, goes to the word
9 "society." This goes to what Ms. Balido just said, we're
10 going to object to any statement from the defense that
11 non-prison population can be considered by the jury only if
12 the State proves the defendant will actually be outside the
13 penitentiary or have influence outside the penitentiary.
14 And, again, that would place the burden on the State that the
15 legislature has not placed on us at this point.

16 MS. BALIDO: And, Judge, we would argue that
17 they have placed that burden on the State because they
18 changed the law. All the cases say we're going to leave that
19 to the legislature and they change the law.

20 THE COURT: Defense objection is overruled.

21 State's request is granted.

22 MR. DAVIS: And Number 3 actually is going to
23 be a rewording of the same motion, Your Honor, again, placing
24 the burden on the -- on the State to prove the defendant
25 would be outside or have influence outside the penitentiary

1 on Special Issue Number 1 which we've already concluded
2 regards future dangerousness.

3 MS. BALIDO: Objection.

4 THE COURT: Overruled.

5 Granted.

6 MR. DAVIS: Number 4 would go to any statement
7 from the defense that the State has the burden of proof on
8 the issue of mitigation, Your Honor.

9 THE COURT: The Court has previously ruled on
10 it.

11 MR. DAVIS: Yes, sir. Any statement that a
12 particular circumstance must be considered as being
13 mitigating.

14 MS. BALIDO: Judge, I don't have a problem
15 with that Motion in Limine as it's worded.

16 THE COURT: Okay.

17 MR. DAVIS: Number 6, any inquiry into how a
18 venireperson would respond to a particular circumstance
19 presented in a hypothetical question. Again, the law is
20 pretty clear. They can ask any hypothetical that they want
21 to illustrate or to explain a law, but it is improper the
22 courts have held to commit that venireperson to that
23 hypothetical and to ask them to commit themselves to a
24 particular set of circumstances. And that's what we would
25 object to, not the hypotheticals, but the commitment within

1 those.

2 MS. BALIDO: Judge, I don't have a problem
3 with us committing to a certain set of facts, but I do have a
4 problem with us not being allowed to talk about certain
5 anticipated facts that might be an issue in this case. Just
6 to determine whether or not there is bias or prejudice.

7 THE COURT: Permit me to give you latitude on
8 that, but as to commitment, would you if you heard thus and
9 so do X, that --

10 MR. DAVIS: That's mainly what I'm objecting
11 to, yes.

12 THE COURT: The State's request in that regard
13 is granted.

14 MR. DAVIS: Yes, sir.

15 THE COURT: The State may continue.

16 MR. DAVIS: Yes, sir. Number 7 will go back
17 to the issue of victim impact testimony. And again, we're
18 going to object to any attempt on the part of the defense to
19 commit the jurors to tell us how much weight or to exactly
20 what affect that type of testimony would have on the issues
21 of future dangerousness and mitigation. Again, it's not even
22 relevant to future dangerousness, but I think it's an
23 improper attempt to commit them to that specific issue.

24 THE COURT: The Court is not going to permit
25 either side to raise questions on individual voir dire the

1 result of which would commit them. But I think with regard
2 to the matter of mitigation, I'm going to be very, very
3 careful in listening to the responses of the prospective
4 jurors during individual questioning as to whether or not
5 they would be willing to listen to mitigating evidence, if
6 presented, and then determine whether or not it's
7 believable. And, Number 2, if it rises to the level that is
8 anticipated if we get to the penalty stage of the trial. And
9 if they're not going to be willing to listen to it, I want to
10 tell you right up front the Court will be constitutionally
11 obligated, as I understand the Supreme Court, to grant a
12 challenge for cause. Just because they hear it, they don't
13 have to believe it.

14 MR. DAVIS: Right.

15 THE COURT: They don't have to believe it
16 rises to the level for an answer of yes to the second
17 question, but I think this is one of the leading
18 constitutional edges and they must be willing to listen and
19 consider it before they make a determination rather than just
20 turn their back on it, say phooey, based upon the facts
21 presented during the guilt/innocence phase, I've made up my
22 mind. Then we kind of got to look at the circumstances
23 through a different light, that is, mitigating evidence, if
24 any is presented, and then determine whether or not it rises
25 to the level to give weight to it in appropriate defense

1 favorable response.

2 MR. DAVIS: Don't have a problem with any of
3 that. The problem would be if you take it to the next step
4 to ask that juror exactly what type of weight would you give
5 that type of evidence.

6 THE COURT: Oh, no.

7 MR. DAVIS: See, that's the problem, and
8 that's what I want to cut off.

9 THE COURT: Grant the State's request in that
10 regard.

11 MR. DAVIS: Yes, sir.

12 THE COURT: I want both sides to be very
13 mindful I'm going to be listening very careful -- I want
14 conscientious jurors that are willing to listen to mitigating
15 evidence, if such is presented, if we get to the penalty
16 phase of the trial.

17 MR. DAVIS: Right. Number 8 is going to go
18 down to any statement that the law does not allow jurors to
19 give certain classes of witness slight edge in terms of
20 credibility. This will go to questions I've heard regarding,
21 you know, would you start these people equally, will you
22 start them ahead of each other. The law says it's allowable
23 to give a certain class of witnesses a slight edge. What's
24 not allowable is to say you'll automatically believe that
25 person because they are contained in a special class or

1 you're automatically going to disbelieve them. I believe
2 that's what the standard is under Ladd v. State.

3 MS. BALIDO: Judge, can I respond? Ladd v.
4 State was dealing with the issue as to whether the juror in
5 that case said that we give a doctor or police officer
6 testimony more credibility if they were testifying based on
7 their expertise and did not address the issue as to whether
8 or not they would believe them just because they were police
9 officers which has been traditionally the question asked.
10 Would you believe a police officer to be more credible
11 because they're police officers. I think we're entitled to
12 go into would you believe a doctor just because he's a
13 doctor, more than just a regular Joe Smoe witness. I don't
14 think Ladd has changed that because if you look at the facts
15 of the case, you look at the questions that were actually
16 asked that jury in Ladd, I think that we're entitled to go
17 into that.

18 THE COURT: Let me reread Ladd.

19 MR. DAVIS: I don't have a problem asking that
20 question, would you give a police officer a bit of an edge.
21 That's proper for peremptory challenges. The difficulty
22 would be to say the law does not allow you to give a police
23 officer a slight edge. The law does not allow you to give a
24 certain class. Now, juror, what would you do? Because that
25 is a misstatement of the law. They can ask about their

1 feelings about certain classes. I think that's proper.

2 THE COURT: Let me reread Ladd.

3 MR. DAVIS: Number 9, any statement that the
4 law does not allow the venireperson to be predisposed towards
5 the death penalty in answering the issue of future
6 dangerousness. You know, I've heard this question phrased a
7 lot of different ways in which, you know, based on the fact
8 that you've found the defendant guilty of capital murder now,
9 you know -- you know, the law is not going to allow you, you
10 know, to be leaning one way or the other. And the case law
11 here again recently in Maldonado v. State has come out to say
12 it is allowable, in fact, for a venireperson to be
13 predisposed. What they have to be able to truthfully say is
14 that they will base their decision in Special Issue Number 1
15 on all of the evidence after they have heard all the
16 evidence, and that is the proper standard now, not whether
17 they're leaning when they get down to Special Issue Number 1,
18 but whether or not they'll keep an open mind and after all
19 the evidence will they force the State of Texas to meet its
20 burden of proof.

21 THE COURT: Well, doesn't that cut both ways?
22 Predisposed either for the death penalty or against the death
23 penalty?

24 MR. DAVIS: Well, it could. And again, it's a
25 proper question to say, how are you going to feel about

1 Special Issue Number 1. Are you going to be leaning one way
2 or the other? I mean, both sides are entitled to ask that
3 question, but what would be improper is that the law says
4 that you are not allowed to feel that way when you get down
5 to Special Issue Number 1.

6 THE COURT: Depending upon how its phrased,
7 does the defense have any objection?

8 MS. BALIDO: Yes. And it kind of seems like
9 to me that the State is trying to have its cake and eat it
10 too because they asked a question on the questionnaire about
11 whether or not you could -- you know, basically are some
12 capital murders so --

13 MR. BYCK: Solely based on the facts.

14 MS. BALIDO: -- solely based on the facts of
15 the capital murder, could you give death just solely on the
16 facts of that one case, and then not allow us to talk about
17 the facts of the case and whether or not you're predisposed
18 then to -- into giving death at that point.

19 MR. DAVIS: I'm not objecting to that. Again,
20 I'm not objecting to questions about how they feel, whether
21 they are predisposed or not, but what I am objecting to
22 saying is, you know, now, juror, let me tell what you the law
23 says. The law says when you get down to Question Number 1
24 you cannot be leaning either way. The law -- the law does
25 not say that. They're entitled to say how are you going to

1 feel. Do you think that you will be leaning when you get
2 there.

3 THE COURT: Ask an open-ended question without
4 a pre-commitment, I'll permit that.

5 MS. BALIDO: Okay. We might have to kind of
6 experiment with that a little bit.

7 THE COURT: Fine.

8 MS. BALIDO: Oh, I'm sorry.

9 MR. DAVIS: Number 10 and Number 11 really
10 will go to punishment issues. I think they're pretty
11 straightforward though. Number 10 is going to go to the
12 defendant's childhood or family photographs. That would be
13 with regard to punishment evidence by the defense, I suppose
14 for mitigation. Again, I believe the case law is pretty
15 clear. That's just not relevant information for the jury to
16 have.

17 THE COURT: They can introduce it later on.
18 You're not saying they can't do that?

19 MR. DAVIS: I'm saying -- I'm saying that on
20 punishment --

21 THE COURT: On punishment --

22 MR. DAVIS: -- on punishment with regards to
23 mitigation, and I anticipate that will occur in this case,
24 that there will be an attempt at some point to offer
25 childhood or family photographs to tell his life story. I

1 anticipate that, and what I'm saying is that's improper. The
2 courts have held such in Rose v. State.

3 MS. BALIDO: Judge, I think the case in Rose
4 was there was basically just the family and childhood
5 photographs that didn't have any tie into how it tied into
6 mitigating the offense. So I would agree that there was an
7 issue in Rose that the photographs themselves were trying to
8 be mitigation evidence. I mean, I don't know at this point
9 how much mitigating evidence we're going to have. And if
10 it's relevant -- I don't have a problem with approaching the
11 bench and having a hearing about it, but I don't want any
12 kind of --

13 THE COURT: The Court will sustain the State's
14 request. However, if the defense wishes the Court to revisit
15 this after a proffer outside the jury's presence, I will
16 reconsider the relevance of the proffered evidence.

17 MR. DAVIS: Number 11 is going to go to
18 testimony from the defendant's family or friends regarding
19 their feelings on the prospect of the death penalty or the
20 impact the defendant's execution would have on them. Again,
21 the courts have held in Fuller v. State that that is not
22 relevant testimony.

23 MS. BALIDO: Judge, if I could just direct the
24 Court's attention to -- Fuller was decided before Mosley, and
25 things have changed since Mosley as to what is mitigating and

1 what is not. And also certainly if the victim impact --
2 depends on how much victim impact comes in as to whether or
3 not we want to bring that up in our rebuttal of the State's
4 rebuttal.

5 THE COURT: Does the State anticipate -- I
6 mean does the defense anticipate asking a question such as is
7 anticipated in Number 11 during voir dire?

8 MS. BALIDO: No, not during voir dire.

9 THE COURT: Should the defense choose to offer
10 evidence of the type made reference in Fuller v. State, the
11 Court is going to sustain the State's objection at this
12 point. However, I will revisit the issue of the proffer
13 outside the jury's presence and revisit the issue and will
14 consider reversing myself, depending upon the proffer.

15 MR. DAVIS: Judge, I believe that's all the
16 pretrial motions we have that would impact in any way to jury
17 selection.

18 THE COURT: All right. My we -- since we are
19 outside of the presence of a prospective juror, we've not yet
20 proceeded with arraignment in these matters. Both sides have
21 any objection to carrying all the cases together, or do you
22 want just out of an abundance of caution just to do the
23 capital case?

24 MS. LITTLE: Let's just do the capital case.

25 THE COURT: Well, you can think about it over

1 the weekend.

2 The arraignment in Cause F00-02424-NM, styled the
3 State of Texas versus Jedidiah Isaac Murphy, will be
4 conducted in open court, outside the presence and hearing of
5 any prospective juror or jury panel.

6 Mr. Davis.

7 MR. DAVIS: Thank you.

8 "True bill of indictment, in the name and by the
9 authority of the State of Texas..."

10 (Arraignment By Mr. Davis.)

11 MR. DAVIS: "...do present that one, Jedidiah
12 Isaac Murphy --

13 Is that your true name?

14 THE DEFENDANT: Yes, sir.

15 (Continued Arraignment.)

16 MR. DAVIS: "...against the peace and dignity
17 of the State, signed Bill Hill, Criminal District Attorney of
18 Dallas County, Texas, and by the foreman of the grand jury."

19 THE COURT: To that indictment, Jedidiah Isaac
20 Murphy, how do you plead, sir?

21 THE DEFENDANT: Not guilty.

22 THE COURT: Thank you. The record will so
23 reflect.

24 This matter -- pretrial matter concluded for the
25 day?

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MS. BALIDO: Yes, Your Honor.

MR. DAVIS: Yes, Your Honor.

(Recess of proceedings.)

Reporter's Certificate

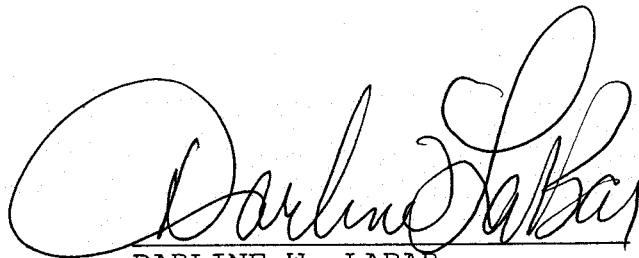
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 3rd day of October, A.D., 2001.



DARLINE W. LABAR
Official Court Reporter
194th Judicial District Court
Dallas County, Texas
(214) 653-5803

Certification No. 1064 Expires December 31, 2002

REPORTER'S RECORD

74145

VOLUME 5 of 65 VOLUMES

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT
VS. : DALLAS COUNTY, TEXAS
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

FILED IN
COURT OF CRIMINAL APPEALS

INDIVIDUAL VOIR DIRE

DEC 5 2001

A P P E A R A N C E S:

Troy C. Bennett, Jr., Clerk

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Dallas County Public Defender's Office
Phone: 214-653-9400
FOR THE DEFENDANT.

On the 12th day of March, 2001, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable F. Harold Entz, Jr.,
Judge presiding, held in Dallas, Dallas County, Texas:
Proceedings reported by machine shorthand, computer
assisted transcription.

DARLINE W. LABAR, OFFICIAL REPORTER

ORIGINAL

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1 P R O C E E D I N G S

2 THE COURT: Those of you that are witnesses in
3 the Jedidiah Isaac Murphy case, may I ask that you rise,
4 please come forward and be sworn, please.

5 Good morning, may I ask those of you that anticipate
6 being witnesses to raise your right hand and be sworn in,
7 please.

8 Each of you solemnly swear or affirm that you will
9 give correct testimony to the jury impaneled once they are
10 impaneled in this trial, so help you God?

11 (Witnesses sworn.)

12 THE COURT: Thank you. Lower your hands.

13 May I ask that you individually give your name to
14 Ms. King, the court reporter, after which I'll give you some
15 additional instructions. May we start with you, sir?

16 THE WITNESS: Mark Scott Read, R-e-a-d.

17 THE WITNESS: Dale, D-a-l-e, Corbett,
18 C-o-r-b-e-t-t, Wills Point PD.

19 THE WITNESS: James R. Lee, L-e-e, Wills Point
20 Police Department.

21 THE WITNESS: Donald Alberty, A-l-b-e-r-t-y.

22 THE WITNESS: Jerry Wood, W-o-o-d.

23 THE WITNESS: George Poteet, P-o-t-e-e-t.

24 THE WITNESS: Elisabeth Erwin, E-r-w-i-n.

25 THE WITNESS: Shirley Bard, B-a-r-d.

1 THE WITNESS: Bobby Harp, H-a-r-p.

2 THE WITNESS: Akran Aridi, A-k-r-a-n,
3 A-r-i-d-i.

4 THE WITNESS: Kenneth Clance, C-l-a-n-c-e.

5 THE WITNESS: Debbie Armstrong.

6 THE WITNESS: Treshod Tarrant, T-r-e-s-h-o-d,
7 T-a-r-r-a-n-t.

8 THE WITNESS: Sherryl, S-h-e-r-r-y-l, Wilhelm,
9 W-i-l-h-e-l-m.

10 THE WITNESS: Ora, O-r-a, Mae, M-a-e, Milton,
11 M-i-l-t-o-n.

12 THE WITNESS: Richard Shollenberger,
13 S-h-o-l-l-e-n-b-e-r-g-e-r.

14 THE WITNESS: Debra Murphy.

15 THE COURT: Is there anybody that has not
16 given the court reporter their name? Nope. Thank you.

17 Ladies and gentlemen, we're going to begin
18 individual questioning today of prospective jurors, so from
19 our standpoint, it will be a bit of a time consuming
20 process. We hopefully anticipate completing this process way
21 before May 29th, but -- counsel, is that the date that we
22 have tentatively -- day after Memorial Day is celebrated, we
23 anticipate beginning presentation of testimony to the
24 impaneled jury. So if you would kind of put that on your
25 calendars to make yourself available beginning the 29th until

1 your presentation, whatever part it may be, is completed. If
2 something however on the date that you're to return should
3 prevent you coming back, such as illness or incapacitated by
4 virtue of an injury or some sort of family emergency such as
5 a funeral, I understand those things. Please see that you
6 personally or have somebody on your behalf remain in contact
7 with the court or either the District Attorneys Office, Mr.
8 Davis or Ms. Miller, we'll work with you anyway that we can.

9 Now that you've been sworn as a witnesses, if you
10 should up and fail to return, by law I am obligated to inform
11 you that an attachment can issue which is kind of like an
12 arrest warrant and the Sheriff's Department will come out
13 pick you up and you will remain in custody until you finish
14 testifying. Obviously, we don't want that to happen. So if
15 there is anything we can do to work with you, please don't
16 hesitate to let us know.

17 MR. BYCK: Your Honor, may we approach?

18 THE COURT: You may.

19 MR. BYCK: Very briefly.

20 (Side bar conference.)

21 THE COURT: If you have future discussions
22 with the District Attorneys Office with regard to your
23 testimony, please have it on a one-on-one basis as opposed to
24 two or more of you being together in an effort somewhat to
25 avoid comparative testimony. Thank you so much. You are all

1 excused.

2 (Recess of witnesses.)

3 THE COURT: With regard to a couple of
4 housekeeping chores before we begin, will be impaneling or
5 qualifying a number of jurors before the peremptory
6 challenges by either side will be made.

7 With regard to the request by the defense that they
8 have the benefit of the prior jury history record information
9 of prospective jurors --

10 MR. BYCK: Judge, do we need the defendant?

11 THE COURT: Yes.

12 With regard to this, I will make my decision
13 verbally which anticipate will make neither side totally
14 happy.

15 (Defendant brought into courtroom.)

16 THE COURT: In an effort to level the playing
17 field in a legal sense and in light of the super due process
18 that the Texas Supreme Court has on a number of occasions
19 discussed with regard to capital cases, going to honor the
20 State's request and they will not be required by the Court to
21 turn over the information having been gleaned over decades
22 with regard to the history of prospective jurors in criminal
23 cases.

24 The other side of the coin is this. For every
25 prospective qualified juror for which the State has history

1 with regard to their criminal jury service, that the State
2 chooses not for work product reasons to share with the
3 defense, I will be giving the defense an additional
4 peremptory challenge. Therefore, if the State wishes to up
5 the information, defense does not get an additional
6 peremptory challenge. For strategic purposes, if the State
7 does not wish to share that information, based on work
8 product, I understand it, but I will give the defense an
9 additional peremptory challenge as compensation.

10 MS. BALIDO: Judge, can I ask a question?

11 THE COURT: Sure.

12 MS. BALIDO: Does that mean that the defense
13 will be placed in the position that we have to specifically
14 ask every single juror whether or not a jury history has been
15 run?

16 THE COURT: The Court will ask the State after
17 the Court has determined -- after the Court has heard any
18 additional challenges for cause.

19 MS. BALIDO: At this time the defense will ask
20 for specific findings of fact and conclusions of law on each
21 of the grounds that we asked for this information in our
22 motion.

23 THE COURT: The Court will later on formulate
24 those. I will take that under advisement at this time.

25 MR. DAVIS: I do have one other matter

1 regarding videotaping of the jurors. It's my understanding
2 the defense will be videotaping --

3 MR. BYCK: No.

4 MS. LITTLE: No.

5 MR. BYCK: As a matter of fact, we'll withdraw
6 that motion.

7 MR. DAVIS: Okay.

8 MS. BALIDO: Judge, just with one caveat.

9 THE COURT: Let the record so reflect.

10 Ms. King is grateful.

11 MS. BALIDO: The one thing we would like to do
12 since we're going to qualify an entire panel is take a
13 Polaroid shot of the jurors so we can be refreshed with their
14 photograph.

15 THE COURT: Request granted.

16 MR. BYCK: Your Honor, may the record reflect
17 that due to the Court's ruling that we will be qualifying 48
18 jurors and making peremptory challenges --

19 THE COURT: May be 48 plus.

20 MR. BYCK: 48 plus. After the challenges for
21 cause, will all have been heard in that group together, the
22 defense will waive its right to have the jurors seated in
23 voir dire in order, and we will therefore agree with the
24 order this afternoon, where we're going to speak to Juror
25 Number 19, Juror Number 77, and Juror Number 208, they may

1 not be in exact numerical order --

2 THE COURT: Thank you.

3 MR. BYCK: -- but we will waive that right due
4 to the Court's ruling.

5 THE COURT: Thank you. I think those other
6 matters the Court will continue, and as soon as I have made
7 those decisions for the benefit of counsel, I will put those
8 on the record as well.

9 MS. LITTLE: Your Honor, I need to submit to
10 the Court one mitigation question --

11 THE COURT: Has the State seen the question?

12 MS. LITTLE: Actually no.

13 MR. DAVIS: No, Your Honor.

14 THE COURT: Would you like me to read it?

15 MS. LITTLE: That would be -- if you read it
16 in the record, I would appreciate it, Your Honor.

17 THE COURT: The defense has proposed to the
18 Court they desire to ask prospective jurors the following
19 question: Quote, would victim character testimony cause you
20 to reduce the State's burden of proof on Special Issue Number
21 1? And follow-up question is that do you promise the Court
22 that you would not do so?

23 MR. DAVIS: Well, again, I would object to
24 that obviously because what it asks for is a commitment on
25 whether they will consider it, whether they will give it

1 effect, and, you know, it's a clear attempt to commit a juror
2 to a specific type of evidence. It's obviously -- you know,
3 it would be nothing different than me, you know, asking a
4 juror if you found that an individual had committed another
5 prior act of violence, would you give that effect on Special
6 Issue Number 1. And I'm not allowed to do that. I mean,
7 that's just a clear attempt to commit a juror. I don't think
8 there is any question about that.

9 THE COURT: Ms. Little, do you care to further
10 be heard?

11 MS. LITTLE: Yes, sir. I would submit to the
12 Court that in essence and, you know, whatever terms of art we
13 choose here, the State does have the burden of proof on the
14 first issue. Although the law doesn't provide a burden of
15 proof on the mitigation for either side, I think as a
16 practical matter what does matter is if there is a weighing
17 process that can go on, I would submit to the Court this is
18 an attempt on our part to discover if they really are going
19 to consider mitigating evidence in making a decision and if
20 they're biased against the law on mitigation because it's
21 relevant to mitigation, Special Issue Number 1 -- Number 2
22 and not 1.

23 THE COURT: The Court is going to sustain the
24 State's objection on Number 1, and I will be visiting with
25 the prospective individual jurors before you-all have at them

1 and try to flush them out an exit.

2 30 minutes a side with a warning after 25 minutes
3 unless you're close on the needle and need a little more. Is
4 that fair?

5 Mr. Davis, is that fair?

6 MR. DAVIS: Yes, sir.

7 THE COURT: 30 minutes -- and if you're close
8 on the bubble and need a little more time, I'll give it to
9 you.

10 MR. BYCK: That's agreeable.

11 THE COURT: Sheriff, may we have the first
12 prospective juror, please?

13 (Discussion off the record.)

14 THE COURT: Good morning.

15 THE WITNESS: Good morning.

16 THE COURT: Sorry to keep you waiting. Raise
17 your right hand, please.

18 (Venireperson sworn.)

19 VENIREPERSON: I do.

20 THE COURT: Lower your hand. What is your
21 name, please?

22 VENIREPERSON: I'm Emilia Nisbet.

23 THE COURT: Thank you, Ms. Nisbet. Ms.
24 Nisbet, let me reintroduce the individuals whom you see at
25 the counsel tables and then we'll proceed right into the

1 matters at hand. At the table to the far left, lead counsel
2 for the State in this prosecution is Mr. Greg Davis.

3 MR. DAVIS: Good morning.

4 VENIREPERSON: Good morning.

5 THE COURT: He is assisted by the Chief
6 Prosecutor assigned at the present time to this the 194th
7 District Court, Ms. Mary Miller.

8 MS. MILLER: Good morning.

9 THE COURT: Moving on to the next table, we
10 have first the lead counsel for the defense, the Honorable
11 Jane Little.

12 MS. LITTLE: Good morning.

13 THE COURT: She is assisted by co-counsel, and
14 to her right as we look at them is the Honorable Mike Byck.

15 MR. BYCK: Good morning, ma'am.

16 THE COURT: And seated behind Mr. Byck is the
17 third defense attorney, the Honorable Jennifer Balido.

18 MS. BALIDO: Good morning.

19 VENIREPERSON: Good morning.

20 THE COURT: Gentleman to the far right of Mr.
21 Byck in the blue shirt, suit coat, red tie, is the accused,
22 Jedidiah Isaac Murphy.

23 THE DEFENDANT: Good morning.

24 VENIREPERSON: Good morning.

25 THE COURT: Ms. Nisbet, let's move right into

1 the matter at hand and if we can somewhat speed forward. Let
2 us assume for purposes of hypothetical that you've been
3 selected as a juror. Furthermore, 11 other jurors have been
4 selected. Evidence has been presented at the guilt/innocence
5 stage of the trial. After hearing the evidence, the Court's
6 instructions, deliberation with your other 11 jurors, you
7 have reached the conclusion -- and again we're speaking of
8 hypotheticals.

9 VENIREPERSON: Uh-huh.

10 THE COURT: That the defendant is guilty of
11 capital murder. So we've crossed that bridge, if you will,
12 figuratively. As I indicated to the panel a week ago last
13 Friday, the jury would then be called upon to listen to
14 additional evidence, take into consideration that evidence
15 that has previously been presented in the guilt/innocence,
16 additional evidence which either side may present in the
17 penalty stage of the trial, to determine whether or not the
18 defendant will get a life sentence or a death sentence.
19 There is a built-in predisposition in the law of Texas toward
20 a life sentence. And I think all us agree in light of the
21 enormity of the ultimate punishment, that's the way it should
22 be. So there is a bias, if you will, in favor of life and
23 not death.

24 VENIREPERSON: Okay.

25 THE COURT: A life sentence for capital murder

1 in Texas equals 40 calendar years in the penitentiary before
2 being eligible for consideration on parole. 40 flat years,
3 day-for-day, week-for-week, month-for-month. Does not mean
4 at the end of that 40 years the penitentiary doors will open
5 up, but the process of eligibility then commences.

6 Before a life sentence is changed to death, certain
7 special issues must be determined by the jury. The two
8 special issues that the attorneys and I contemplate the jury
9 in this case will be called upon to address you see to the
10 far left. Can you read them from where you now find
11 yourself? Read them to yourself if you would, please.

12 (Venireperson allowed time to read)

13 THE COURT: Those are not questions that we
14 just dreamed up for this particular trial. This is what the
15 legislature down in Austin has placed into the statute and
16 the United States Supreme Court and Texas Court of Criminal
17 Appeals have reviewed ad nauseam.

18 VENIREPERSON: Okay.

19 THE COURT: Let me explain to you the effect
20 of these special issues, just put all our cards on the table.
21 We want nothing to be hidden from any prospective juror. If
22 the jurors during their deliberations in the penalty phase
23 answer Special Issue Number 1 in the affirmative or yes, by
24 law they are then obligated to go on to Special Issue Number
25 2. On the other hand, if the jury answers Special Issue

1 Number 1 in the negative, it's all over and it will be a life
2 sentence, not death. But if the jury answers Special Issue
3 Number 1 in the affirmative or yes, the jury as a whole must
4 then deal with Special Issue Number 2.

5 Special Issue Number 2 is what we call the
6 mitigation issue. The United States Supreme Court on a
7 number of occasions have said that to be a qualified
8 prospective juror, a juror must be willing and able in their
9 heart of hearts to listen to mitigating evidence, if any is
10 presented, and then determine whether or not it rises to the
11 level as a result of which the defendant, in this case Mr.
12 Murphy, should live and not die.

13 Special Issue Number 2 is in so many words a last
14 chance question. Because if the jury answers Special Issue
15 Number 1 yes and Special Issue Number 2 no, a death sentence
16 is the result. And unlike other states where a jury's
17 answers to special issues are but recommendations to the
18 court, Florida being the prime example, not so in Texas.
19 Given our fervent populist belief in the will of the people,
20 we give awesome responsibility to the jury. You don't do it
21 alone. Whereas Arizona the Judge alone would determine alone
22 whether it's life or death. So you would, if you are one of
23 the jurors, to be one of 12 persons to be called upon under
24 my hypothetical to answer these questions.

25 Do you understand the effect that those two

1 questions would have?

2 VENIREPERSON: I do, sir.

3 THE COURT: Are you as you sit here willing to
4 tell us that you would be willing to listen to mitigation
5 type evidence and decide -- listen to it carefully and only
6 after carefully factoring that into your mental determination
7 answer Special Issue Number 2?

8 VENIREPERSON: Yes.

9 THE COURT: The Supreme Court of the United
10 States has said we cannot define what mitigation evidence is.
11 Mitigation is kind of like beauty. It's in the eye of the
12 beholder. Whatever you consider mitigation evidence is
13 mitigating evidence. Could be alcoholism, drug abuse, fetal
14 alcohol syndrome, learning disability. It covers a water
15 front. Just because it's presented does not mean that you
16 need automatically to give effect to it. But to be a
17 prospective qualified juror, you must listen to it, give it
18 serious consideration, and then make a collective
19 determination with your fellow jurors whether or not it rises
20 to the level as a result of which the defendant, in this case
21 Mr. Murphy, should live or not die.

22 I realize this is a Monday morning. We've kind of
23 had a nasty weekend, and you've probably been -- a little bit
24 of trepidation and fear about this type of situation. We
25 want you to know up front that there are no right or wrong

1 answers to the questions that they will be asking.

2 VENIREPERSON: I understand.

3 THE COURT: This is not a citizenship test.

4 We don't grade people whether or not they're good or not good
5 citizens by virtue of how they feel about the death penalty,
6 so we don't want any -- we don't want -- none of us want you
7 to take the questions personally, but we understand and
8 appreciate you know the serious business at hand and we trust
9 and know that you will take it in the manner that I have just
10 presented it to you.

11 VENIREPERSON: Thank you.

12 THE COURT: Do you have any questions of me
13 before the attorneys begin?

14 VENIREPERSON: No.

15 THE COURT: We anticipate beginning the
16 testimony in this trial -- hopefully the jury will be
17 selected way before then, but the Tuesday after the Monday
18 that Memorial Day is celebrated. Do you at this point know
19 of any irreversible problem that would prevent your altering
20 your schedule and make certain you are available if you are
21 selected as one of the 12 jurors?

22 VENIREPERSON: There is one issue. I work at
23 a model home sales office.

24 THE COURT: Yes.

25 VENIREPERSON: I am the only other person

1 other than the sales counselor. I'm her assistant. There is
2 nobody there today answering the phones or anything. I could
3 not get anybody in. So from that standpoint, that will be a
4 hardship for us.

5 THE COURT: Given this amount of time, do you
6 think you might be able to make some arrangements?

7 VENIREPERSON: May be able to.

8 THE COURT: All right. We will begin with the
9 State, Mr. Davis, followed by the defense.

10 MR. DAVIS: May it please the Court.

11 THE COURT: You may proceed.

12 EMILIA NISBET

13 was called as a venireperson by the Court and, after having
14 been first duly sworn, testified as follows:

15 Voir Dire Examination

16 By Mr. Davis:

17 Q. Morning again, Ms. Nisbet. How are you?

18 A. Good morning. I'm just fine.

19 Q. As the Judge told you, my name is Greg Davis. Along
20 with Mary Miller, I represent the State of Texas in this
21 case. For the next 30 minutes or so I'll have a chance to
22 speak with you. We're going to go over a number of things
23 that the Judge just talked to you about. We'll talk about
24 your questionnaire a little bit and talk to you in a little
25 bit greater detail about the death penalty. And then you'll

1 be passed to the other side. They'll have an opportunity to
2 talk to you also for about 30 minutes.

3 And really, as the Judge told you, we're going to be
4 dealing, or at least I will, how you feel about things, what
5 your opinions are, and believe me, I've heard enough of this
6 that I know there aren't any right or wrong answers. We need
7 to know how you truly feel about this. All right?

8 A. Okay.

9 Q. Let me just begin and ask you, you know, it's been
10 some time since you came down to that Central Jury Room and
11 filled out the questionnaire and you've probably had a little
12 bit of time to think about this now. And let me just ask
13 you, Ms. Nisbet, having had some time to reflect, how do you
14 really feel about sitting on this type of jury where the
15 State is seeking the death penalty, where if the State
16 prevails in this case, there will come a day when Jedidiah
17 Isaac Murphy will lie dead on a gurney in Huntsville, Texas?
18 How do you feel about that?

19 A. Since the day I answered the questionnaire, at that
20 time you're not thinking about all this. Since that time
21 I've thought a lot more. It's a tough situation. I think
22 it's an awesome responsibility to give to a jury.

23 Q. I've heard that -- I don't think any of us would
24 want a juror who would take this lightly. I've heard jurors
25 say it's not something that I necessarily want to do, but I

1 accept it as my civic responsibility if you choose me. I'm
2 the type of person who can follow the law. I'll listen to
3 the evidence, and I'll come up with a verdict that is best.

4 Do you feel like you could do that in this type of
5 case?

6 A. I believe I could do that.

7 Q. Fair enough. You know -- and as we talk about
8 opinions, it's fair to say that everybody feels differently
9 about some of these things that we're going to talk about.
10 Some people have strong opinions one way or the other, but
11 the key is going to be in this case, as a juror, if
12 necessary, could you set aside your feelings and could you
13 follow the instructions given to you by the Judge because
14 see, there will be two judges here really. You'll be the
15 judge of the facts. You'll listen to all the facts,
16 determine what you believe the truth to be. But Judge Entz
17 will give you certain written instructions, and he'll give
18 you certain definitions that you need to work from. He'll
19 give you instructions on what this law means, how you're to
20 apply that law. And as a juror, your duty bound to follow
21 the law given to you by the Judge.

22 Now, in general do you feel like you're the type of
23 person who could and would follow the instructions given to
24 you by Judge Entz?

25 A. Yes.

1 Q. Ms. Nisbet, you know, again, the reality is the
2 State is seeking the death penalty. We're not going to
3 change our position in this case. I can assure you of that.
4 At the punishment phase, if we reach that phase, I'll make
5 you a promise that I will be standing before you asking you
6 to answer those special issues in such a way that the Judge
7 will be duty bound again by the law to impose a sentence of
8 death on Jedidiah Isaac Murphy. As he just told you, there's
9 no wiggle room there. If you answer these questions yes and
10 no, he is obligated under the law to impose a sentence of
11 death. Any other combination will mean a life sentence.

12 And again, a number of people come down and they'll
13 say, you know, in the abstract I believe in the death penalty
14 law. I think it's necessary. I'm glad that we have it. It
15 serves a useful purpose. But as you can see, as you look at
16 Mr. Murphy, there is nothing abstract about him. He's a
17 living, breathing human being. And again, if we prevail, he
18 will die some day in Huntsville. And again, do you feel like
19 you're the type of person who could look at the facts, apply
20 the law given to you by Judge Entz, and answer these
21 questions according to your conscience and the evidence in
22 this case?

23 A. Yes.

24 Q. And that's even if that results in the death
25 sentence for Mr. Murphy?

1 A. Yes.

2 Q. Fair enough. Ms. Nisbet, just in general -- I know
3 that you're in favor of the death penalty. Can you -- can
4 you -- can you think of any cases recently perhaps that
5 you've heard about or followed in the media where you thought
6 maybe the death penalty might be an appropriate punishment
7 for that type of case?

8 A. No, sir, I really can't. I really can't think of a
9 case.

10 Q. Okay.

11 A. A specific case.

12 Q. Right. In this case I believe the Judge has already
13 explained to you that we've alleged that the capital murder
14 involves the intentional murder of an individual by the name
15 of Bertie Cunningham. And that murder occurred during the
16 course of the commission or attempted commission of two
17 separate felonies, either a robbery or a kidnapping. And I
18 believe as you recall back in the large panel, that's what
19 makes a capital murder. It's always an intentional murder
20 plus something else, and the something else in this case is
21 the commission of a robbery or a kidnapping.

22 Now, in general does that seem like the type of
23 category of case where you think the death penalty might be
24 appropriate, depending upon the facts that you hear about
25 that case?

1 A. Well, again, I wouldn't know until I heard all the
2 facts.

3 Q. Exactly. And that's the type of juror that we're
4 waiting for here, that we're looking for, somebody that tells
5 us I'm not going to prejudge anything. I want to hear the
6 facts. You give me the facts, then I'll make my decision.
7 Is that fair enough?

8 A. Yes.

9 Q. Let me ask you just a bit of a hypothetical question
10 maybe. In Dallas County right now, Ms. Nisbet, do you
11 believe that it might be possible that there are people here
12 in this county who would kill another individual to obtain
13 their property? Do you think it's possible there might be
14 people like that living in Dallas County today?

15 A. To protect their property?

16 Q. No, ma'am. In order to take their property, in
17 order to rob them, do you think there are people who would
18 take another human beings' life?

19 A. Yes.

20 Q. Do you think it's possible that there are people who
21 a would do that, kill another person to obtain their
22 property, and then have absolutely no remorse at all about
23 having done that?

24 A. Again, I would have to hear a specific case. I
25 can't make some broad judgment.

1 Q. Okay. Okay. Do you think just in general that
2 people should be held responsible or accountable for their
3 actions?

4 A. Yes.

5 Q. Okay. And I believe that we had a question here on
6 the questionnaire about use of alcohol and the fact that it's
7 not a defense in the State of Texas. Intoxication is not a
8 defense. I believe that you've agreed with that law. Do
9 you -- in general do you believe that people should be held
10 responsible for their actions, even if they do take alcohol
11 or perhaps another controlled substance of some sort?

12 A. Yes.

13 Q. For instance, if I go out today and I voluntarily
14 become intoxicated, or I voluntarily take a banned drug, such
15 as cocaine or heroin or marijuana or whatever it might be and
16 then I go out and I commit a crime, perhaps a murder, in
17 general do you think that I should be held accountable for my
18 actions?

19 A. Yes.

20 Q. I need to talk to you for just a moment about the
21 lesser included offense of murder. Okay. The reason I do
22 that is because, remember, a capital murder is always murder
23 plus something else. Now, in this type of case, let's say,
24 for instance, that the State could prove that a murder
25 occurred, but for whatever reason we failed to prove that it

1 occurred during the robbery or kidnapping. Well, in that
2 kind of situation the Judge would instruct you if you found
3 the defendant guilty of murder, that you would have to assess
4 his punishment. And it would be a little bit different than
5 it is in a death penalty case because actually you'd hear
6 evidence at the punishment phase. And then you'd have a
7 verdict form, Ms. Nisbet, and you would actually write in the
8 number of years that you thought was the proper sentence.
9 And the Judge would instruct you for the offense of murder
10 that that could range anywhere between 5 years in the
11 penitentiary, all the way up to 99 years or life in the
12 penitentiary. Very wide range obviously. And he would --
13 you would also be entitled, when you think about the
14 punishment, you could consider all the facts of the case that
15 you've heard. You could consider the defendant's background,
16 his character, anything that is relevant on punishment. Does
17 he have a criminal background? Does he not have a criminal
18 background? What was the relationship between the two
19 parties? Any number of things could come into play. And
20 then you would go back, you'd take the verdict form, you'd
21 write in the sentence that you thought was proper.

22 And again, what we would ask you to do on a murder
23 case is this, have the same open mind that you do here today.
24 Go back there with the understanding I'm not predisposed
25 toward any particular sentence. I want to hear the

1 evidence. And if that evidence tells me that's the type of
2 case where the minimum should be given, as low as 5 years, if
3 I truly believe that that's the proper sentence, that's the
4 sentence that I'll give. If it's somewhere in between, I'll
5 give that. And if I truly believe, based on the facts of
6 that particular case for that particular defendant that I
7 think the maximum is called for, I can do that, too.

8 Do you believe in a murder case -- and again, we
9 can't go into specific facts, but do you believe in general
10 in a murder case that you would have an open mind, that you
11 could consider anything between 5 years up to 99 years or
12 life, depending on the facts that you heard in that
13 particular case?

14 A. Yes.

15 Q. Okay. Good. That's really all we ask to you do is
16 have an open mind and say until I hear it, I don't know what
17 I'm going to do. You give me the facts, then I'll give you
18 the sentence. You seem to be the type of person that could
19 do that, correct?

20 A. Yes.

21 Q. Okay. Fair enough. Ms. Nisbet, let's -- let's turn
22 our attention then to the punishment phase in this case, to
23 the special issues over here on the board. And as the Judge
24 has told you, if a defendant is found guilty of capital
25 murder, there are only two possible sentences at that point.

1 It's either going to be a life sentence or a death sentence.
2 In a death penalty case it would depend on how you answer
3 these special issues. Again, if you answer Special Issue
4 Number 1 yes and Special Issue Number 2 no, that's the death
5 sentence. Any other combination results in an automatic life
6 sentence. So far you understand the scheme?

7 A. Yes.

8 Q. Let's talk then in a little bit greater detail about
9 Special Issue Number 1. Special Issue Number 1 -- first of
10 all, let's talk about the burden of proof. The burden of
11 proof is on the State of Texas on Special Issue Number 1.
12 Special Issue Number 1 is presumed to be answered no until
13 the State of Texas proves beyond a reasonable doubt that it
14 should be answered yes. It's our burden of proving to you
15 that it should be answered yes. If we meet our burden of
16 proof, then you answer it yes. If we fail to meet our burden
17 of proof, you answer it no.

18 Do you believe that you would again wait until you
19 hear all of the facts and then determine if the State of
20 Texas has proved its burden of proof? If we proved it should
21 be yes, could you answer it yes? And if we failed to meet
22 that burden of proof, could you answer it no?

23 A. Yes.

24 Q. Okay. With regards to some of these words, I'll
25 tell you most of them don't have legal definitions. I guess

1 that's the good news. You get to define them any way that
2 you want to. But I do want to key on a couple of words
3 because these words were given to us by the legislature. The
4 first word is probability. Whether there is a probability
5 that the defendant would commit criminal acts of violence
6 that would constitute a continuing threat to society.

7 Now, you see the legislature could have given us
8 different words. They could have said whether there is a
9 certainty that the defendant would do that. They could have
10 gone the low side, and they could have said whether there is
11 a chance or a possibility, mere possibility, but what they've
12 done is you can see they've kind of come down in the middle.

13 A lot of jurors have told me in the past that
14 probability to them means something that is more likely than
15 not going to happen. It's greater than 50 percent odds, if
16 you will.

17 Does that seem fair to you on probability?

18 A. Yes.

19 Q. The next phase I'd like to look at would be commit
20 criminal acts of violence. Now, the legislature again could
21 have forced the State to prove that this defendant would
22 commit future murders or future capital murders before you
23 could answer that question yes. They haven't done that.
24 They could again have gone on the low side to say is he going
25 to commit any criminal acts at all? Is he going to jaywalk.

1 You can think of a number of nonviolent crimes. But what
2 they've done is would he commit criminal acts of violence.
3 When you think of acts of violence, Ms. Nisbet, what type of
4 things come to your mind? How would you differentiate a
5 violent as opposed to a nonviolent act?

6 A. Violence could be an assault, murder, rape,
7 violence.

8 Q. Something involving another person?

9 A. Yes. Generally -- generally speaking.

10 Q. As opposed to if I go out to maybe an abandoned car
11 someplace and I jimmy the lock, get inside, there's nobody
12 around. Is that kind of the differentiation that you see
13 there?

14 A. Yes.

15 Q. The last word that I would like to look at is the
16 word "society." When you think of society, who comes to
17 mind?

18 A. All of us.

19 Q. Everybody here. And that certainly can be a
20 component of society. Everybody in what I would call the
21 free world, if you will, that lives out here with us. In
22 terms of Special Issue Number 1, though, can you see how that
23 could also include people that could be in a prison setting,
24 essentially anywhere that the defendant may find himself?
25 Would you agree that that could be his society?

1 A. Yes.

2 Q. And what I need to know, I guess, is this. Do you
3 believe that people in a prison -- now, these may be people
4 who have been convicted of other felony offenses who are
5 serving long sentences themselves, inmates, if you will. It
6 could be guards. It could be other employees of the prison
7 system. It could be visitors, contractors, anybody that
8 finds themselves in that prison system.

9 Do you think that those individuals are deserving of
10 protection also against criminal acts of violence?

11 A. Certainly.

12 Q. Okay. So if I hear you correctly, and correct me if
13 I'm wrong, society to you that could include is, it could
14 include everybody essentially, even in a prison setting?

15 A. Society encompasses everybody.

16 Q. Okay. One other question on Special Issue Number 1,
17 and I'm going to give you a lot of authority here. I'm going
18 to make you the queen of Texas here for a moment. Okay? You
19 get to write all the laws here for a second. But if you had
20 that kind of power in answering Special Issue Number 1, what
21 types of things do you think might be helpful to you in
22 knowing before you had to answer Special Issue Number 1?
23 What type of things -- say I'd like to know about this or
24 that before I have to answer Special Issue Number 1. What do
25 you think might be helpful to you?

1 A. I really don't know without hearing the particulars
2 regarding his crime. I really don't know what I would be
3 looking for.

4 Q. All right. Let me tell you the types of things that
5 the law would allow you to look at, and you can tell me
6 whether or not they would be helpful or not. First of all,
7 the law says that you can consider the crime that you just
8 found him guilty of. What are the facts and circumstances of
9 that offense, for instance? What's the nature of it? What
10 type of relationship did the killer have to the victim? Did
11 they have a long, good relationship? Did they have a long,
12 bad relationship? Were they strangers. How did the murder
13 occur? Where did it occur? Why did it occur? Was it
14 particularly brutal? You know, you get to look at all of
15 those factors about that offense itself. Was it planned?
16 Does it appear to be some sort of spur of the moment? You
17 see?

18 A. All that.

19 Q. All that. But the law would allow you to look at
20 the defendant himself. What's his background? What's his
21 character? I guess common sense might tell you you have
22 somebody that's never been in trouble with the law before.
23 This is the only scrape he's ever had with the law. He has
24 no prior arrests, no prior convictions. He's never been
25 involved with the criminal justice system whatsoever. Or on

1 the other hand, you may have a person that has a long track
2 history, if you will, of criminal acts and perhaps even prior
3 criminal acts of violence in the past. So you get to look at
4 those types of things, also.

5 Do you think that those would be helpful to you in
6 answering Special Issue Number 1?

7 A. Yes.

8 Q. Ms. Nisbet, before we go on to Special Issue Number
9 2, do you have any questions about Special Issue Number 1,
10 about our burden of proof, what you're going to be asked to
11 look at in Special Issue Number 1?

12 A. No.

13 Q. Okay. Thank you. Let's look at Special Issue
14 Number 2 then for a moment. And as the Judge said, I think
15 of it as kind of a safety net, if you will. First of all,
16 it's different than Special Issue Number 2 because there's no
17 burden of proof. The State has no burden of proving to you
18 that it should be answered no. The defense has no burden of
19 proving that it should be answered yes. Essentially what the
20 law asks you to do is forget everything else that you've done
21 in the case, forget about how you voted on guilt/innocence,
22 forget about your answer to Special Issue Number 1, and step
23 back and take another good long look at all the evidence, no
24 matter where it came from, and ask yourself the question, is
25 there something in that evidence, and you can see -- you can

1 look at the offense again. You can look at the defendant's
2 character, his background, personal moral culpability. You
3 can look at all those things and ask yourself is there
4 something in there that I think is sufficiently mitigating
5 that I should give a life sentence instead of a death
6 sentence. That's really what it asks you to do. Keep an
7 open mind, look at the evidence again. If it's there, you
8 answer it yes, give him life. If it's not there in your
9 mind, you answer it no and he gets death.

10 Do you think you can go through that process in this
11 case?

12 A. I believe so.

13 Q. As Judge Entz told you, there is no laundry list of
14 things that we consider to be mitigating, because what is
15 mitigating to one person could be aggravating to another
16 person. I believe the Judge talked about alcohol use or drug
17 use. There could well be people who think that's mitigating
18 in some fashion. But I can tell you there may also be an
19 equal number of people that think it's very aggravating if an
20 individual knowingly ingests something like that and commits
21 a violent act. So that's a very personal thing for you to
22 decide. If something is proposed as being mitigating, as the
23 Judge said, you don't have to consider it mitigating. You
24 may say it has no effect. You may say in your own mind it's
25 aggravating. But even if you think it's mitigating in some

1 way, you still have to ask that question, do I believe that
2 it rises to such a level in my own mind where it's sufficient
3 to change a death sentence to a life sentence. That's really
4 the inquiry that you have to make at that point.

5 And I hear you saying that you are the type of
6 person who has the discipline necessary to look at everything
7 again, weigh whether it's mitigating or not, even if it is
8 mitigating, does it rise to that level or not, and then
9 answer the question accordingly. Can you do that?

10 A. Yes.

11 Q. And again, you don't have to consider anything to be
12 mitigating or not. That's a personal decision there. You
13 may not be able to think of anything right now that you would
14 give that effect to. That's really not the chore today
15 because we can't go over the specific facts in this case. We
16 can't commit you to any set of facts in this case. All we
17 can ask you to do is say, Ms. Nisbet, if you're on a case
18 like this and if you heard the evidence and you truly thought
19 it was sufficiently mitigating to change death to life, you'd
20 do that. And if you didn't, then you'd answer it no. Fair
21 enough?

22 A. Yes.

23 Q. Okay. Ms. Nisbet, let me -- let me just take a
24 couple of minutes and let's go through some of the general
25 principles that the Judge went through before. First of all,

1 the burden of proof. As he told you, the burden of proof in
2 guilt/innocence is on the State of Texas. I've got to prove
3 beyond a reasonable doubt that Mr. Murphy is guilty. If I do
4 that, you find him guilty. If I fail to do that, you find
5 him not guilty. Right now he's presumed innocent. That
6 presumption alone is enough to find him not guilty if I fail
7 to meet my burden of proof.

8 Can you assure me that you will hold me to my burden
9 of proof in this case?

10 A. Yes.

11 Q. As the Judge told you, the indictment is no evidence
12 of guilt in this case. It's just a piece of paper.
13 Essentially it tells me as a prosecutor what I have to
14 prove. It tells Mr. Murphy what he's charged with so he can
15 defend himself. I know what it says because I personally
16 drafted that indictment in this case. Okay? Mr. Murphy has
17 been served with a copy, so we're both on the same page
18 here.

19 Can you assure us in this case here that the
20 indictment will be no evidence of guilt to you?

21 A. Yes.

22 Q. Okay. One of your -- one of your primary functions
23 will be to judge the credibility of witnesses. I mean,
24 that's how we'll be presenting our testimony for the most
25 part. We'll have people sitting in that chair. We'll be

1 asking them questions. There may be other exhibits, those
2 sorts of things. But you get to decide whether you believe
3 that witness. You can believe all of what they say, none of
4 what they say, part of what they say. That's up to you.
5 What we ask you to do again is to keep an open mind. Wait
6 until you hear that person to decide whether or not you're
7 going to believe them or not.

8 Do you feel like you could do that?

9 A. Yes.

10 Q. And that would -- that would mean even if it's a
11 police officer, basically they get the same treatment from
12 you as maybe an electrician, a plumber, whoever. Maybe
13 you've had a bad experience. My dad was an electrician.
14 I've worked with him. Not everybody likes us when they get
15 the bill. So -- but, you know, you kind of put that aside
16 and you say whoever they are, I'll listen to them. I'll
17 decide after I listen to them.

18 Can you do that?

19 A. Yes.

20 Q. One of the things that happens in cases such as this
21 one from time to time would be dealing with a piece of
22 evidence, a confession, if you will. And let me talk to you
23 for a moment about that, explain the law to you. You are
24 probably familiar if you watch any of these cops shows or
25 lawyer shows that there are certain warnings that have to be

1 given to the defendant. They are called Miranda warnings.

2 Let's say in a case such as this one that I went
3 out, I -- I robbed a 7-11 store. No one saw me do it. I'm
4 not captured. I go back to the store a few days later. A
5 police officer is there. I tell him, hey, you know a few
6 days ago I robbed the store. Let me give you a statement.
7 He takes me downtown. He doesn't give me all of my
8 warnings. Okay. And then the confession is brought into
9 court. Well, the Judge in that case would instruct you that
10 if you find that all the warnings weren't given properly,
11 then you can't give effect to that confession. That's the
12 bottom line on that situation. It may be a hard situation,
13 but that's the only evidence you have against me. You know
14 that I'm guilty, but the Judge has now told you, you can't
15 consider that confession even though it may result in a
16 guilty verdict. The law in that kind of case, even though it
17 may not be a pleasant thing for you to do, would require you
18 to find the defendant not guilty. Again, that's where some
19 people have strong opinions perhaps, but the law would tell
20 you you can't consider it. If there's not enough besides
21 that confession, you have to find him not guilty.

22 Even in that type of situation, Ms. Nisbet, do you
23 think you can follow the law?

24 A. Yes.

25 Q. We talked a little bit about burden of proof, types

1 of evidence, and there are all types of evidence. It could
2 be from a witness who saw something, heard something, but in
3 a lot of cases it could be the form of a confession. Could
4 be other circumstantial evidence. In general I think we ask
5 about circumstantial how you felt about that, but could you
6 just tell me again what are your general feelings when you
7 hear the word "circumstantial evidence" in a case such as
8 this one?

9 A. Well, there would be different things that would
10 probably suggest that he committed the crime, and I can't
11 come up with specifics, but that would be circumstantial.
12 That's what circumstantial would mean to me.

13 Q. All right. You know they could include any number
14 of things. It could include -- I believe that you listed DNA
15 for instance?

16 A. Exactly.

17 Q. Blood evidence is a form of circumstantial evidence.
18 DNA could also be in the form of fingerprints for instance.
19 Kind of as a general term it could be just the circumstances
20 themselves.

21 Let me just give you an example. Let's say that
22 you're coming home from work and you see me stepping out of
23 your front door and I've got your television set in my arms
24 and I'm running away from your house. You didn't see me go
25 in, but I'm in possession of your goods and I'm leaving your

1 place. That would be a circumstance of my guilt. You see?

2 And again, do you feel if that circumstantial
3 evidence were strong enough, if we could prove our case
4 through that alone, do you feel like you could base a verdict
5 of guilty on circumstantial evidence alone, or do you think
6 regardless of how strong the circumstantial evidence is that
7 you would always need an eyewitness to corroborate that?

8 A. It would depend upon the circumstantial evidence.

9 Q. Okay. If you listened to it, you thought it was
10 compelling enough, if you were convinced that we had proven
11 our case beyond a reasonable doubt, do you think that you
12 could base a verdict of guilty on that?

13 A. Perhaps. Uh-huh.

14 Q. Okay. Because I've had some people come down and
15 they honestly say I understand what the law says, I
16 understand that you can base a verdict of guilty on a
17 circumstantial evidence alone, I know that the State has the
18 burden of proving this case beyond a reasonable doubt, not a
19 shadow of a doubt, but I know this is a capital murder case
20 and I'm just telling you up front this is different in my
21 mind and you're going to have to show me more than beyond a
22 reasonable doubt. You're going to show me more than just
23 circumstantial evidence, even though I know the law doesn't
24 require that. How do you feel about that?

25 A. It would have to be compelling --

1 Q. Uh-huh.

2 A. -- circumstantial evidence.

3 Q. Okay. Ms. Nisbet, let me just kind of take a moment
4 here and give you an opportunity to ask me any questions that
5 you might have. I've done a lot of talking I'm afraid. But
6 do you have any questions about what you're going to be asked
7 to do if you're chosen as a juror in this case?

8 A. No, I think it's been made very clear what the
9 duties of a juror would be.

10 Q. I suppose my final question to you would be, do you
11 think that you're going to be a fair juror to both sides if
12 you were sitting over here in my seat representing the State
13 of Texas, the victim's family in this case, would you be the
14 type of person that you would want on this jury?

15 A. Probably.

16 Q. Okay. Ms. Nisbet, I appreciate your time this
17 morning, your patience with us, your candor. I know it's not
18 easy to talk about a lot of these things, but we really do
19 depend on that, trying to select 12 jurors that will be fair
20 to both sides. So I appreciate it.

21 VENIREPERSON: Thank you.

22 THE COURT: Ms. Nisbet, would you like to take
23 a little stretch break before we get started?

24 VENIREPERSON: That would be wonderful. Could
25 I go back into the juror room?

1 THE COURT: Yes.

2 VENIREPERSON: Oh, wonderful. Thank you.

3 THE COURT: Counsel, five minutes.

4 (Recess taken.)

5 THE COURT: Good morning.

6 THE WITNESS: Pardon for being late.

7 THE COURT: No problem. Raise your right
8 hands, please.

9 Do you and each of you solemnly swear that you will
10 make true answers to such questions as may be -- oops, I
11 don't need that one. Solemnly swear that the evidence you
12 give in this matter will be the truth, so help you God?

13 THE WITNESS: I do.

14 THE COURT: I apologize. Will you give the --
15 your names, gentlemen, to the court reporter, individually,
16 please?

17 THE WITNESS: Ryan Hammonds, H-a-m-m-o-n-d-s.

18 THE WITNESS: Randy Hammonds, H-a-m-m-o-n-d-s.

19 THE COURT: Gentlemen, we have just begun
20 questioning of individual jurors. As soon as we have 12
21 jurors and a couple of alternates selected, we will begin the
22 testimony. We anticipate finishing the early part of May.
23 I'd like to give the attorneys on both sides a bit of time to
24 get their ducks in a row, if you will, after the jury has
25 been selected just so witnesses and the jurors are not

1 further inconvenienced. We anticipate beginning the
2 testimony in this trial on the 29th of May. If you would
3 please kind of keep your calendars open for that day.

4 Now, if something should happen that prevents your
5 coming down on the 29th, such as illness or you've been
6 involved in an accident or family emergency, such as
7 attending to a funeral of a family member or friend, we
8 understand those things. But just stay in touch with Mr.
9 Davis -- I guess Mr. Richardson, is he the --

10 INVESTIGATOR: Yes, sir.

11 THE COURT: Is he the investigator?

12 INVESTIGATOR: Yes, sir.

13 THE COURT: Do you know how to get ahold of
14 either of them, if necessary?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Do you have any questions for me,
17 gentlemen?

18 THE WITNESS: No.

19 THE COURT: Okay. Thank you.

20 MS. BALIDO: Judge, we would ask that you give
21 them the same instruction --

22 THE COURT: If you have any further interviews
23 with Mr. Davis or Ms. Miller on behalf of the State,
24 one-on-one outside the presence of either both of you or any
25 other witness.

1 THE WITNESS: Yes, sir.

2 THE COURT: Talk with them as much as you
3 want, but one-on-one.

4 (Recess of proceedings.)

5 MS. BALIDO: Judge, if I can be heard real
6 quick on this. Judge, these last two witnesses were known to
7 the defendant, but we'd object to any jurors being sworn in
8 in the presence of the defendant since there might be an
9 identity issue later on.

10 THE COURT: Any other witnesses?

11 MS. BALIDO: Any other witnesses.

12 THE COURT: All right.

13 MS. BALIDO: The one -- the big group this
14 morning was not in the presence of the defendant. We don't
15 want it to taint the I.D.

16 THE COURT: Mr. Davis, if there's future
17 witnesses about whom that made reference swearing in, let's
18 do it outside the defendant's presence.

19 MR. DAVIS: He wants it outside his presence?

20 THE COURT: Yes. Who will be beginning on
21 behalf of the defendant?

22 MR. BYCK: I will, Your Honor.

23 (Venireperson returned.)

24 THE COURT: Ms. Nisbet, we will continue with
25 the defense in the person of the Honorable Michael Byck.

1 Mr. Byck.

2 MR. BYCK: Thank you, Your Honor.

3 Cross-Examination

4 By Mr. Byck:

5 Q. Good morning again, Mrs. Nisbet.

6 A. Good morning.

7 Q. Again, my name is Michael Byck. And together with
8 my co-counsel, Jane Little and Jennifer Balido, who is not in
9 the room right now, we are representing our client, Jedidiah
10 Isaac Murphy in this the trial for his very life. I
11 appreciated the seriousness and the concentration in which
12 you answered Mr. Davis's questions, as well as the questions
13 we asked you on the juror questionnaire. I'm going to ask
14 you some of the same questions, some very different
15 questions. But very frankly, let me start out at the very
16 beginning.

17 That is that I'm not going to get on this jury. I'm
18 really not. You might. So what I say very frankly while I
19 may like to hear myself talk, I'd rather like to hear you
20 talk. So if you have something you want to say, please, I
21 want to hear it. Okay?

22 A. Uh-huh.

23 Q. Okay. I noticed you were born in Detroit.

24 A. Yes.

25 Q. How long have you lived in Dallas?

1 A. Eight years.

2 Q. Eight years. And where did you live before that?

3 A. Kansas City -- Lawrence, Kansas. It's a bedroom
4 community of Kansas City.

5 Q. And how long were you there?

6 A. 13 years.

7 Q. Were you also in real estate up there?

8 A. No. No, this is brand new for me.

9 Q. Brand new?

10 A. I was a homemaker there in Kansas.

11 Q. Okay. And how long have you been in the real estate
12 business?

13 A. Just since November.

14 Q. Okay. This is again one of those questions that
15 nobody knows the answer to but you, and, believe me, we are
16 not trying to trick you or get something out of you that you
17 don't want to say. But on the other hand, it is important
18 that you be honest with us. The reason why is it could come
19 back to haunt you later. This is the question I'm going to
20 ask you.

21 Due to your job and the pressures that you have due
22 to income, to keep your position in the company, or whatever
23 other pressures that you have -- which very frankly I'm not
24 in the real estate business and I don't understand that -- is
25 that going to be something where you cannot afford to spend,

1 oh, probably a good five to seven working -- five to eight
2 working days with us? At the end of May and the beginning of
3 June, where it will be something that -- and I know you've
4 been called on capital murder case. You're obviously a
5 conscientious lady. You wouldn't want to be distracted. You
6 wouldn't want to have other things on your mind, but if you
7 would, if you did, that obviously would not be of benefit to
8 my client. And very frankly, I don't think it would be a
9 benefit to the State of Texas either. You tell us where you
10 are in your business, the pressures that you have on you, and
11 do you think you could afford this seven, eight working days
12 in the beginning of June?

13 A. Okay. Where I stand is I'm hourly. I'm not like
14 when you say real estate business. Working as a sales
15 assistant in a model home. I'm just an hourly employee with
16 no benefits.

17 Q. Uh-huh.

18 A. So basically if I serve on jury, I will have no
19 income for the entire period of time I'm on the jury.

20 Q. Will that serve as a substantial distraction to you?

21 A. That will serve as a hardship for me.

22 Q. Okay. We're buzzing around a little bit deciding
23 your fate; is that okay?

24 A. Yes.

25 Q. Okay. And I think you understand that we respect

1 your desire to serve on a jury as a civic duty. Believe me,
2 that's -- that's of paramount importance. But on the other
3 hand, there are all kinds of cases that you can serve on,
4 some not so burdensome, some not so complicated. I'm going
5 to be asking people about this, whether there's anything
6 especially about a capital murder that would render them
7 unfit in that case. I have no doubt that you would be a fine
8 juror in most cases. I also have no doubt that you would not
9 be a fine juror in all cases. Nobody would. I wouldn't.
10 I'm sure the members of the State wouldn't either, as fair
11 and impartial as they try to be. So -- so let's continue
12 on.

13 And let me ask you something, you -- we ask a bunch
14 of questions. They are known as our page 4 questions about
15 whether you trust the criminal justice system. And in some
16 of the questions -- let me read the questions to you and your
17 answer.

18 A. Okay.

19 Q. You said that if someone is accused of capital
20 murder, he should have to prove his innocence. And you
21 strongly disagreed with that. You said that a defendant is
22 innocent unless proven guilty beyond a reasonable doubt. You
23 strongly agreed with that. However, you had one answer that
24 very frankly troubled me.

25 A. Okay.

1 Q. You said that if a person is brought to trial on
2 murder charges, that person is probably guilty. And you were
3 uncertain about that answer. Could you explain that to me?

4 A. Yes, because I think before the court system would
5 actually bring somebody to trial, they would have to have
6 probably substantial evidence, circumstantial or eyewitnesses
7 or something that would -- in other words, I don't think the
8 State would enter into a case lightly. I think that to bring
9 somebody -- there's probably, you know, some sufficient
10 evidence there.

11 Q. Okay. Now, you were down in the Central Jury Room
12 last Friday and you were present --

13 THE COURT: A week ago.

14 Q. (By Mr. Byck) Pardon me, a week ago Friday. And
15 you were present when we called 2300 people. Now, 2300
16 people didn't show up. About 600, give or take, showed up.
17 You heard the indictment read to you. You heard that it was
18 murder in the course of a robbery, kidnapping, certain manner
19 or means. You are now the first of a big long list of
20 jurors. You've seen the printed special issues that we have
21 up there.

22 A. Uh-huh.

23 Q. Let me ask you. If I were to ask you to vote right
24 now whether Jedidiah -- whether you would vote Jedidiah
25 Murphy innocent or guilty, how would you vote?

1 A. I would have to make a decision now -- how could I
2 make a decision when I haven't heard anything?

3 Q. That's not a bad question. That's not a bad
4 question at all to ask. What I'm saying is, there is a
5 presumption of innocence.

6 A. Yes.

7 Q. There is a presumption of innocence that attaches to
8 people who are charged with traffic tickets, to people who
9 are charged with driving while intoxicated, to people who are
10 charged with -- with robbery, without guns or hurting
11 anybody, and also people who are charged with capital
12 murder. That presumption of innocence says that right now,
13 at 10:23 in the morning on this date, if you were asked to
14 vote --

15 A. Oh, okay.

16 Q. -- would you -- how would you vote?

17 A. You focused me. Innocence -- or innocent.

18 Q. There is no problem with that. Okay. You talked to
19 us also about the death penalty. And you said that you
20 really don't have an argument in favor of the death penalty.
21 You have an argument against one which is probably that thou
22 shalt not kill. And you said that on a scale of 1 to 10, if
23 you believed in using the death penalty, how strongly do you
24 feel about that and you put 5. You put right in the middle.
25 And do you still feel that way?

1 A. Yes, I do.

2 Q. Okay. Is there any particular reason why you didn't
3 write 10 or you didn't write 1 or any other number, or -- is
4 that just accurate about the way you feel?

5 A. Just accurate about the way I feel. That, you know,
6 I would have to hear everything.

7 Q. Okay. Further on your questionnaire I notice that
8 you knew two individuals, a Mr. Foster and Mr. Tubert that
9 were charged with conspiracy.

10 A. One was conspiracy. The Foster was a conspiracy,
11 and Tubert, I'm not exactly sure what his charges were. It
12 might have been to do with like white collar kind of bribery
13 or something. I'm not really certain.

14 Q. How do you know these people?

15 A. Mark Foster was my husband's son-in-law.

16 Q. Uh-huh.

17 A. So it's my second husband, his son-in-law. And
18 Frank Tubert was a business associate of my husband's.

19 Q. Okay. So were you married at the time to your
20 husband when that son-in-law was convicted?

21 A. Yes.

22 Q. And you were concerned in the case; is that right?

23 A. Concerned in it?

24 Q. Concerned with it?

25 A. Oh, certainly.

1 Q. Okay. You weren't -- you had nothing to do with the
2 situation that got them to where they were with the federal
3 government or anything like that?

4 A. No.

5 Q. Do you feel they were treated fairly from what you
6 knew?

7 A. From what I knew, yes.

8 Q. Okay. Any -- what do they call it these days,
9 hidden inventories?

10 A. Pardon me?

11 Q. Hidden inventories, grudges you were carrying about
12 that?

13 A. Oh, no.

14 Q. Okay. I see you've made some contributions to
15 Mother's Against Drunk Driving.

16 A. Yes.

17 Q. Any particular reason that you donated to that
18 particular cause?

19 A. Simply to -- they inform people -- yes, because
20 drunk driving kills people.

21 Q. Do you know anybody that drunk driving has killed?

22 A. Yes.

23 Q. What were the situations -- what was the
24 circumstances?

25 A. This was many years ago. My -- one of my best

1 friends, her son-in-law was killed by a drunk driver a week
2 after getting back from his honeymoon.

3 Q. I could well see where that would make an impression
4 on you.

5 What happened on that case? Was that individual
6 charged, tried, convicted, punished?

7 A. You know, I really don't know all the circumstances
8 regarding the outcome of that, because shortly thereafter I
9 moved from Detroit to Kansas, so I didn't -- I didn't want to
10 question or talk to her about that. I felt it would bring up
11 a troubling subject for her.

12 Q. Okay. Let's talk a little bit about the offense of
13 capital murder, at least in a guilt or innocence phase. You
14 understand, as Judge Entz has told you, that capital murder
15 is murder plus. Murder plus something else. And that in a
16 capital murder case the law is very, very careful in defining
17 words for you. They will tell you what the words on or about
18 mean or they will tell what you the phrase means in the
19 course of committing means. But capital murder is a rather
20 unique offense. And that is what is known as a specific
21 intent or a result oriented offense, at least in terms of the
22 murder. Okay.

23 Now, there are several ways of committing murder.
24 One can intentionally commit a murder. One can knowingly
25 commit a murder. And what we're talking about there are

1 mental states that accompany the murder. Plus there's all
2 kinds of ways to commit murders with guns and knives or
3 whatever. But what I'm talking about here is a mental state.
4 Because capital murder is unique, or almost unique in that it
5 requires a specific mental state, that mental state being
6 specific intent to kill. As it is put in the law and you
7 will be charged by the Court, the definition of intent in
8 that situation is when it is one's conscience objective and
9 desire to both engage in the conduct and cause the result.

10 Let me give you an example. Please do not be afraid
11 for Mrs. King. Mrs. King is our court reporter. She is well
12 protected by our bailiffs and while it may appear that I'm
13 threatening her, I'm really not. Okay. All right. I don't
14 like Mrs. King, haven't liked her for a long time, and I
15 decided, well, today is the day we're going to settle that
16 hash. I'm going go out and I'm going to buy a gun. I'm not
17 only going to go out and buy a gun, I'm going to buy some
18 bullets. I take the gun and the bullets and I load them.
19 And somehow, probably not involving a whole lot of
20 cleverness, I sneak it into this courthouse. Okay. I bring
21 the gun up here. And as we're having voir dire, I have all
22 sorts of varieties of nervous twitches and things that Mrs.
23 King doesn't like, so she finally says something that pushes
24 me over the edge and I take out my gun and I show it to Mrs.
25 King. I don't want to frighten her. That's not my object.

1 I point the gun at her. Again, I don't want to scare her. I
2 cock the hammer back. I aim the gun. And I pull the
3 trigger. I do not want to hurt Ms. King. I want to kill
4 her. I want her to die. All those things I have done in
5 preparation and in furtherance of my one intent, my one goal.
6 I don't want to scare her, I don't want to hurt her, don't
7 want to wound her, I want to kill her. That is the kind of
8 intent that is necessary for a capital murder. There are
9 other kinds of intent that fall a little bit lower. One is
10 called whether an individual knowingly does something. I
11 could do -- knowingly do something that the results were
12 foreseeable. Oh, I don't know, let's say in the example with
13 our court reporter, I just take the gun and I don't really
14 intend on killing her way, way down deep in my heart, but I
15 sure don't like her anymore so I fire the gun at her five
16 times. Right? Well, I happen to hit her and kill her.
17 It's, you know, pretty much, you know, foreseeable that if
18 I'm going to fire a gun in a person's direction, I could hit
19 them and kill them. I could be guilty of murder. The exact
20 same kind of murder that would get me from 5 years to 99
21 years that Mr. Davis talked about. That's not capital
22 murder. Capital murder has to be a very specifically
23 intended kind of murder. Okay?

24 A. Yes.

25 Q. Okay. Also, the State of Texas has to prove all the

1 elements in the indictment. And the elements in the
2 indictment are fairly simple, that on or about a specific
3 date, at a specific place, Dallas County, Texas, a named
4 individual with the intent to commit the offense of murder,
5 and that is the specific intent. All right. Did by manner
6 and means shoot with a gun, stab with a knife, run over with
7 an automobile, whatever is alleged, those are known as the
8 manner and means, killed a person who was alive at the time
9 and that was done in the course of committing another
10 offense. So a robbery, a kidnapping, a rape, a burglary of a
11 habitation, whatever. All those are elements. Every one of
12 those elements has to be proved beyond a reasonable doubt.

13 The State must prove -- the State says they have the
14 burden of proof. They do. They have the burden of proving
15 beyond a reasonable doubt each and every one of those
16 elements. So if the State of Texas were to prove that a
17 named individual was guilty of murder of a named person that
18 happened on or about a certain date and in the manner and
19 means alleged in the indictment, but they don't prove that it
20 happened in Dallas County, that individual is not guilty of
21 the offense of murder as it is alleged and indicted in that
22 indictment. That may be very, very difficult for some
23 people. You know, because they may say, yeah, he killed a
24 person, there is no doubt about that. He did it -- you know,
25 while he was trying to rob the person, but it was -- I don't

1 know, it was 400 yards over the line into Tarrant County or
2 something, right on the line in Arrington. And if that is
3 not alleged and if that is not proven up, the defendant is
4 entitled to a verdict of not guilty. While it certainly
5 wouldn't, I imagine, make you happy to have to do something
6 like that, are you the kind of person that would follow the
7 Judge's instructions because believe me, the Judge's
8 instructions are going to swing both ways. And he's going to
9 tell you that if you find or if you cannot find beyond a
10 reasonable doubt any one of those elements, got to vote not
11 guilty. Will you be able to do that?

12 A. I'm confused.

13 Q. Sure. How --

14 A. Well, if -- you just said if it wasn't proven that
15 the murder took place in Dallas County, but might have been
16 over the State or county line into Tarrant County, if that
17 were the case, why wouldn't the indictment happen in Tarrant
18 County? I'm confused.

19 Q. That's exactly right. Why wouldn't it happen in
20 Tarrant County? It should have happened in Tarrant County if
21 those were in truth and in fact the facts. But Dallas County
22 for some reason made a mistake. They said, well, it happened
23 here. It just didn't happen there.

24 THE COURT: One of the elements -- one of the
25 requirements the State must prove, what we call venue

1 location.

2 VENIREPERSON: Okay.

3 THE COURT: So if the evidence shows that the
4 murder was committed other than in Dallas County, you're
5 seeing two former prosecutors. They would probably be
6 terminated. But that's one of the things that the State must
7 prove. It's part of their burden of proof.

8 Do you follow me?

9 VENIREPERSON: I do.

10 Q. (By Mr. Byck) Wouldn't be easy, but you could do
11 it?

12 A. I could.

13 Q. And if the Judge instructed you that you had to find
14 all those things beyond a reasonable doubt and you in good
15 conscience could not find beyond a reasonable doubt that it
16 happened in Dallas County or that it was done in a certain
17 way, you know, shooting with a gun, stabbing with a knife,
18 running over with an automobile, whatever they alleged, that
19 you would say to the State of Texas, hi, guys, you proved
20 five out of seven or seven out of eight, but you didn't prove
21 every one of them, I have to vote not guilty and that's the
22 way I'm voting?

23 A. Yes.

24 Q. Okay. My co-counsel are very interested in a couple
25 of other answers that you had on the questionnaire.

1 A. Uh-huh.

2 Q. We're just asking, no right or wrong.

3 A. Certainly.

4 Q. You were talking about the roles of various court
5 personnel, judges, lawyers, prosecutors. And as to criminal
6 defense attorneys, you say they have enormous responsibility
7 to their clients and more so to society. What do you mean
8 more so to society?

9 A. Again, when we answer these questions, a lot is
10 given to you in a short period of time where you haven't
11 given a lot of thought. What I was thinking was, you know,
12 the awesome responsibility or enormous responsibility, sure,
13 they have a responsibility to their client and while they're
14 defending that client, what I meant by the awesome was in the
15 event that person is found not guilty by defense, but the
16 person really were in fact a murderer, that's an incredible
17 or awesome responsibility to society as well as to their
18 client.

19 Q. I see exactly what you mean.

20 You also stated in a series of questions that I
21 haven't figured out very well, it's that we're talking about
22 a person's destiny or fate. And sometimes it's determined by
23 their birth and upbringing, sometimes it's determined by
24 choices that they make in life, sometimes genetics is thrown
25 into the pot, a little environment, too. I mean, I just

1 can't imagine a more general question. But we do ask you
2 genetics, circumstances of birth, upbringing, and environment
3 should be considered when determining the proper punishment
4 of someone convicted of a crime. And you say you were
5 somewhat uncertain about that.

6 And this question really ties to Question Number 2,
7 or our Special Issue Number 2, about taking into
8 consideration all of the evidence, including the
9 circumstances of the offense, the defendant's character and
10 background, and the personal moral culpability of the
11 defendant. And I guess somewhere there's a question, but I
12 don't know what it is.

13 A. I don't know either.

14 Q. Do you see some kind of a relation --

15 A. I do.

16 Q. -- between birth, upbringing, environment, and
17 genetics?

18 A. I do.

19 Q. Okay. It's interesting when we talk in Special
20 Issue Number 2. We all know what the circumstances of the
21 offense is going to be. That's essentially what the State
22 will prove to you in guilt or innocence. We will -- you know
23 pretty much what a defendant's character and background are.
24 Character is, you know, he has the character or reputation,
25 what other people think about him. Historical facts. Were

1 they into Boy Scouts? Were they in any prior crimes?
2 Whatever it happens to be. However, we do ask about the
3 personal moral culpability of the defendant, and that there's
4 no definitions. Remember I said as specific as we talked
5 about mental states and the intent to kill, and the law is
6 very, very specific on that, it also asks you about personal
7 moral culpability of the defendant. There is no definition
8 to that phrase or those words. Just as Mr. Davis said, there
9 aren't any definitions to the words in any of the special
10 issues. It's very odd in our capital murder scheme. I
11 submit that the law defines everything in the first part and
12 hardly anything in the second part. Sort of strange.

13 Well, I wanted to ask you about what you thought or
14 what you felt about an individual's personal moral
15 culpability? What might you use or what might you be
16 interested in hearing to judge something like that?

17 A. Could you give me some examples? I'm sitting here
18 just -- give me an example what I'm looking for.

19 Q. Let's see, personal moral culpability. What would I
20 put in there? Well, for example, I might put remorse in
21 there. If after an offense the defendant was seen walking
22 down the street chuckling up his sleeve, ha, ha, ha, ha,
23 guess what I've done, right, versus an individual who you
24 know was just crushed, just absolutely flattened, you know,
25 by the -- assuming the guilt and the responsibility of what,

1 you know -- of what had turned out he had done. I submit
2 that those two differences, in terms of remorse, either
3 having some or not having any at all, might bear on an
4 individual's personal moral culpability, something like that.

5 Do you see anything that raises a flag with you that
6 might bear on personal moral culpability?

7 A. Oh, yeah, chuckling down your sleeve would raise a
8 flag.

9 Q. That's just an example.

10 A. Right.

11 Q. I could ask you, well, if you saw some things that
12 would bear on personal moral culpability, would you consider
13 it in your jury deliberations? You've already shown me you
14 could do that, Ms. Nisbet. So what I would like to do is
15 close with you on this job application for a job that you
16 don't want by asking you just a couple of general questions.
17 I could literally sit here all day today and all day tomorrow
18 until my voice just completely went out on me and I ran out
19 of my little menthol cough drops, without asking you the one
20 question that might be key in your mind. The general
21 question is, is there any reason you can think of, ma'am, any
22 reason at all where you could not be a fair and impartial
23 juror in this procedure? Whether it's, you know, you don't
24 like being harangued by an overweight man with a beard for
25 half an hour or you don't like -- you got social obligations,

1 you've got family obligations, you've got financial
2 commitments, you know, it happens to be one personal thing.
3 And let me throw in a personal thing.

4 As Mr. Davis has told you, we are not allowed to
5 tell you about the facts of this offense. We are allowed to
6 ask you some particular facts if in fact they might bear on
7 your -- on your decision. And what I'm really asking about
8 is the facts and circumstances of this offense may show the
9 victim to be an 84-year-old woman. Is there anything about
10 that fact alone that would, if you knew it beforehand or if
11 you found out about it during the trial, would just operate
12 sort of like a light switch, just sort of say, I can't be
13 fair in this circumstance?

14 MR. DAVIS: I'm sorry, I've got to object now
15 to going into specific facts.

16 THE COURT: Sustained.

17 Q. (By Mr. Byck) On the other hand, if the facts and
18 evidence were to prove that it was a small child that was the
19 victim in this offense, would there be anything about that
20 particular fact that would render you incapable of returning
21 a fair and impartial verdict?

22 A. I'd have to hear all the circumstances. I mean, the
23 age of the person I don't think is a factor. A death is a
24 death.

25 Q. Okay.

1 A. A murder is a murder.

2 Q. Believe me, that's fair enough, Ms. Nisbet, because
3 what I'm really asking about -- there are some people who
4 just through certain feelings that they have in life would be
5 able to say, you know, yes, I can sit in the capital murder
6 if the individual was a male or a female civilian. I could
7 do it if they were a child. I could do it if they were a
8 fireman. I could do it if they were a prison guard. I could
9 do it in most circumstances, but I cannot do it if they are a
10 police officer. If you show me a police officer has died,
11 then somebody has got to die. It's just the way that I feel
12 about it. And what I'm just trying to make sure is you don't
13 feel that way about any particular --

14 A. I don't believe I do.

15 Q. Okay.

16 THE COURT: Wind it up.

17 MR. BYCK: Judge, I have just one more
18 question that I need to ask.

19 Q. (By Mr. Byck) And that is -- and I'm going to be
20 honest with you, you don't have any prior jury experience.
21 Very frankly, you don't know if you are to sit on this jury
22 who the other 11 members of the jury are going to be. We
23 don't know either. However, Judge Entz will insist that your
24 deliberations be carried on in the climate of civility, that
25 he is not going to allow and through his court personnel is

1 not going to allow any jurors to be intimidated or denigrated
2 or subjected to, you know -- what's the best way -- power
3 sales techniques, for want of a better phrase. All right?

4 A. Uh-huh.

5 Q. I wanted to tell you that, not only, A, because it
6 is true, but, B, it's -- well, it's an opportunity to avail
7 yourself of our bailiffs. If you are in a situation where
8 you feel that you are being overpowered, that you are -- you
9 know, I don't mean threatened to the point of physical
10 violence, but if you have had enough dealings in your
11 business life to know that some people can sit across the
12 table and converse civilly with you and other people can sit
13 across the table and it's almost like dealing with a caged
14 tiger, right?

15 A. Yes.

16 Q. Okay. If you run into the caged tiger situation,
17 push the button, raise your hand, say, Mr. Bailiff, this
18 person is in my face, on my back, and I'm just not able, you
19 know, to make a decision back here. Believe me, the Court
20 will not allow that to happen.

21 But just like the defendant has rights, the State of
22 Texas has rights, the Court definitely has rights and
23 privileges, well, so do you. So do you as a juror. And in
24 this most important decision and deliberation of a young
25 man's life, there is just no way that this Court is going

1 allow you to be bullied or threatened.

2 Will you promise us that if you are subjected to a
3 situation like that, or, God forbid, you should see somebody
4 else if you are to sit on this jury, subjected to a situation
5 like that, you will tell our court personnel and you will let
6 us know?

7 A. Yes.

8 Q. Okay. Last question, last get out of jail free card
9 I can spring. Is there any reason, any reason that you could
10 think of that you want to tell the Court that would prevent
11 you from being a fair and impartial juror?

12 A. No.

13 Q. Fair enough. Do you have any questions you want to
14 ask me?

15 A. Well, the only thing I would like to say again is
16 with the work schedule. And as far as no income for any
17 prolonged period of time at all, that is a concern for
18 myself.

19 THE COURT: If that should become necessary,
20 could I have your permission to talk with your employer?

21 VENIREPERSON: Certainly.

22 THE COURT: Ms. Madore, excuse --

23 Ms. Nisbet, the attorneys will counsel with their
24 co-counsel with regard to your availability.

25 VENIREPERSON: Okay.

1 THE COURT: After they've made the Court aware
2 of your situation, I'll bring you in and let you know whether
3 you remain under consideration.

4 VENIREPERSON: Thank you.

5 THE COURT: If you'd be excused with Ms.
6 Madore, please.

7 (Venireperson excused from courtroom)

8 Is the State --

9 MS. BALIDO: Do we want to take one picture of
10 her, or are we going to take two pictures?

11 THE COURT: One picture will be enough if she
12 is a keeper. The State --

13 MR. DAVIS: The State has no challenges for
14 cause.

15 MR. BYCK: Can we have a couple of minutes to
16 talk about this?

17 THE COURT: Two minutes.

18 MR. BYCK: Can we have four minutes?

19 THE COURT: No, you can have a cigarette after
20 that.

21 MR. BYCK: We're just going to talk right now.

22 (Recess)

23 THE COURT: Good morning. Ask witnesses to
24 raise their right hand, please. Do you swear the testimony
25 that you may give in this matter will be the truth, so help

1 you God?

2 THE WITNESS: Yes.

3 THE COURT: Thank you. Lower your hands.

4 You've been sworn in now as a witness in the case the State
5 of Texas versus Jedidiah Isaac Murphy. Would you
6 individually please give your name to Ms. King, the court
7 reporter. Your name, please, ma'am?

8 THE WITNESS: Sandra Mamot, M-a-m-o-t.

9 THE WITNESS: Zachery Mamot.

10 THE WITNESS: Pat Mamot, P-a-t, M-a-m-o-t.

11 THE COURT: Thank you. Now that you've been
12 sworn in as witnesses, we are in the process of individual
13 jury selection in this particular trial. We hopefully
14 anticipate that the jury selection will be completed at the
15 first or at the latest the middle part of May. We anticipate
16 that the testimonial stage of the trial will begin Tuesday,
17 May 29th. Please keep that date open. You will be required
18 to return to court, offer testimony, whatever role you play
19 in this matter, at that time. If however something should
20 happen to you that prevents your coming down on that day,
21 such as illness or a mishap, an accident that incapacitates
22 you or a family emergency, such as a funeral or something
23 like that, we're aware of those kinds of problems. So stay
24 in touch with Mr. Davis and make him aware if something
25 prevents your coming down because if you fail to come down on

1 the 29th without letting us know what the circumstances are,
2 an attachment will issue which is kind of like an arrest
3 warrant and you will go to jail until you testify.

4 Obviously, we want to avoid that if at all possible.

5 Do any of you have a question for me, please?

6 Questions at all? No? All right. Of course, Mr. Davis,
7 the gentleman at the prosecutor's table, stay in touch with
8 him if you have a problem. If you confer with Mr. Davis or
9 his co-counsel, Ms. Miller, prior to your testifying, please
10 talk with them on a one-on-one basis outside the presence of
11 any other witness. Okay. Just one-on-one. Okay.

12 THE WITNESS: Okay.

13 THE COURT: Any questions for me? None?
14 Okay. Thank you.

15 The State having accepted the juror, what says the
16 defense?

17 MR. BYCK: We have no peremptory challenges --
18 no challenges for cause at this time, Your Honor.

19 THE COURT: Ms. Nisbet remains under
20 consideration.

21 Sheriff, would you ask her to return, please?

22 (Recess.)

23 THE COURT: Ms. Madore, if you'd please bring
24 Ms. Nisbet back in, please.

25 THE BAILIFF: Yes, sir.

1 (Venireperson returned.)

2 THE COURT: Ms. Madore has brought the
3 prospective juror back into the courtroom.

4 Ms. Nisbet, based upon the attorneys' comments to
5 me, the Court has determined that you will remain under
6 further consideration as a juror in this case. With your
7 permission, I'm going to ask that you allow Mr. Rees, the
8 gentleman bailiff, to take a Polaroid picture of you and I'll
9 tell you why. We're going to be going through this process
10 until we get 48 prospective jurors. Then the list will be
11 narrowed down to the 12 plus the 2 alternates.

12 VENIREPERSON: Okay.

13 THE COURT: I can assure you that the
14 attorneys and I will be talking to quite a few people and
15 after about a month or so of this, it gets a little bit
16 blurry. May we take your Polaroid picture so that we in the
17 future can refer back to you with regard to the -- and I
18 assure you, once the jury has been selected, trust me, they
19 will be shredded and destroyed, will not be made public for
20 any purpose at all.

21 Do we have your permission to do that?

22 VENIREPERSON: Yes.

23 THE COURT: Also going to ask, Sam, if you
24 would confirm with my Court Administrator, Mrs. Daily, if you
25 change phone numbers or addresses between now and May 29th,

1 we'll let you know of course way in advance -- if at any time
2 you want to know how we're proceeding with this process,
3 contact Mrs. Daily and she'll let you know where you fall in
4 this process.

5 VENIREPERSON: Thank you.

6 THE COURT: Do you have any questions of me at
7 this point?

8 VENIREPERSON: No.

9 THE COURT: Do not discuss with relatives,
10 neighbors, or friends anything about what went on today.
11 Obviously, you can tell your spouse or coworkers that you
12 remain under consideration, but don't allow anybody to
13 influence your decision. Do not go back to the Dallas
14 Morning News and look at the publications as to the
15 circumstances of this case, please. Any questions?

16 VENIREPERSON: No, sir.

17 THE COURT: Thank you very much. Have a nice
18 day.

19 VENIREPERSON: Thank you.

20 (Recess.)

21 MS. LITTLE: We'd like for each of the
22 questionnaires in this case to be made a part -- we'd offer
23 them all for record purposes.

24 THE COURT: Even the ones, fours, and fives?

25 MS. LITTLE: No, the ones that are actually

1 scheduled to come.

2 THE COURT: Granted.

3 May I have counsels' permission to cause to be
4 shredded those that were not -- will not be brought down, the
5 ones, four, fives, and sixes?

6 MR. DAVIS: Yes, sir.

7 MR. BYCK: No objection, yes, sir.

8 THE COURT: They will be.

9 MS. LITTLE: I think we provided all those
10 that we've gone through also last week to the Court for
11 shredding.

12 THE COURT: Can't get one more today, guys?

13 MR. BYCK: No. We could waste a lot of the
14 Court's time.

15 MR. DAVIS: Can we read then into the record
16 our agreements. The State and defense have agreed to excuse
17 Juror Number 77, Donna Graham, and Juror Number 208, Mary
18 Caldwell.

19 THE COURT: Sheriff, if you would excuse both
20 of them, please.

21 THE BAILIFF: Yes, sir.

22 MR. DAVIS: Then on these questionnaires, who
23 do you want to give these to, Sam?

24 THE COURT: Either that or you can give them
25 to me.

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MR. DAVIS: Okay.

THE COURT: I'll put them over here.

(Recess for the day.)

Reporter's Certificate

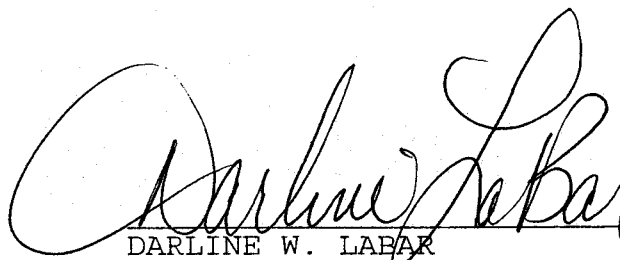
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 13th day of November, A.D., 2001.



DARLINE W. LABAR
Official Court Reporter
194th Judicial District Court
Dallas County, Texas
(214) 653-5803

Certification No. 1064 Expires December 31, 2002

REPORTER'S RECORD

74145

VOLUME 6 of 65 VOLUMES.

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT
VS. : DALLAS COUNTY, TEXAS
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

INDIVIDUAL VOIR DIRE

FILED IN
COURT OF CRIMINAL APPEALS

DEC 5 2001

A P P E A R A N C E S :

Troy C. Bennett, Jr., Clerk

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MS. JANE LITTLE, Attorney at Law, SBOT # 12424210
MR. MICHAEL BYCK, Attorney at Law, SBOT # 03549500
MS. JENNIFER BALIDO, Attorney at Law, SBOT # 10474880
Dallas County Public Defender's Office
Phone: 214-653-9400
FOR THE DEFENDANT.

On the 13th day of March, 2001, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable F. Harold Entz, Jr.,
Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by machine shorthand, computer
assisted transcription.

DARLINE W. LABAR, OFFICIAL REPORTER

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NO EXHIBITS THIS VOLUME

1 P R O C E E D I N G S

2 THE COURT: Before we begin the individual
3 questioning, let the record to reflect a motion has been
4 presented to me by the defense -- I trust ethically a copy
5 has been given to the State -- dealing with regard to a
6 specific, the age of the victim.

7 The defense care to be further heard other than the
8 allegations in the motion?

9 MS. BALIDO: No, we'll stand on our motion,
10 Judge.

11 THE COURT: Defense have --
12 The State have any reply to the --

13 MR. DAVIS: No, sir, we don't have any
14 objection to the motion at all. I believe it's a proper
15 question.

16 THE COURT: Granted.

17 May we have the first prospective juror, Janet
18 Proline Parker, please, Sheriff.

19 Mr. Murphy, Ms. Little is a bit under the weather
20 and I have assured her that her physical condition is of
21 paramount concern. That's why you have three attorneys, all
22 three of whom in the Court's opinion are most adequate to
23 represent your interest. So if Ms. Little's physical
24 condition becomes such that she cannot continue, permission
25 of the Court, she will be excused to attend to her physical

1 condition.

2 Ms. Parker, good afternoon.

3 VENIREPERSON: Hi.

4 THE COURT: Let me ask that you raise your
5 right hand.

6 (Venireperson sworn.)

7 THE COURT: Ms. Parker, I know from having
8 done this on a number of previous occasions individuals have
9 come in and have expressed to all of us a bit of fear or
10 trepidation or concern about where you now find yourself. I
11 want to try to make you, as much as I can, at ease, realizing
12 that this is presumably a new experience for you I assume.

13 VENIREPERSON: Uh-huh.

14 THE COURT: So I want you to take a deep
15 breath and relax. And all of us in this courtroom will do
16 our dead level best to make you as comfortable mentally and
17 physically as we possibly can. Okay?

18 VENIREPERSON: Yes, sir.

19 THE COURT: If at any time during this
20 interview process you want to take a stretch break, don't
21 hesitate to let me know.

22 VENIREPERSON: Okay.

23 THE COURT: I'll be more than happy to let you
24 get up, stretch your legs, take a rest room break if need be,
25 let you catch your breath mentally and physically, and we'll

1 continue. Okay?

2 VENIREPERSON: Okay.

3 THE COURT: Let me begin by reintroducing the
4 individuals whom we see seated at the counsel table. I
5 introduced them before, but I don't know where you were
6 sitting down in the Central Jury Room, but you are a bit
7 closer to them now.

8 Let's begin with the table to the far left. The
9 dark suit, the gentleman, lead prosecutor for the State in
10 this matter, the Honorable Greg Davis.

11 MR. DAVIS: Good afternoon.

12 THE COURT: Seated next to him is his
13 co-counsel, the Chief Prosecutor presently assigned by
14 District Attorney Bill Hill to this the 194th District Court,
15 the Honorable Mary Miller.

16 MS. MILLER: Good afternoon.

17 THE COURT: Moving on to the next table we
18 first have lead counsel for Mr. Murphy, a former senior
19 prosecutor in the District Attorneys Office, now Dallas
20 County Public Defenders Office, a board certified criminal
21 law specialist, Ms. Jane Little.

22 MS. LITTLE: Hi.

23 VENIREPERSON: Hi.

24 THE COURT: She is a little bit under the
25 weather and she will be staying with us as long as her health

1 permits, but if, Ms. Parker, Ms. Little should excuse
2 herself, we all understand that she is fighting a bit of a
3 bug.

4 Moving next to Ms. Little is another one of the
5 defense attorneys, again, board certified criminal law
6 specialist, the Honorable Michael Byck.

7 MR. BYCK: Good afternoon.

8 THE COURT: Seated behind Mr. Byck is the
9 third attorney on behalf of Mr. Murphy, the Honorable
10 Jennifer Balido.

11 MS. BALIDO: How are you?

12 VENIREPERSON: Hi.

13 THE COURT: Seated immediately next to Mr.
14 Byck, to the right as we look at them, is the accused,
15 Jedidiah Isaac Murphy.

16 THE DEFENDANT: Good morning, ma'am.

17 THE COURT: Ms. Parker, let's jump right in to
18 some matters. After my comments, the attorneys will be given
19 an opportunity to talk to you. Let me assure you that when
20 I'm asking you some questions, the attorneys are asking you
21 questions, no right or wrong answers.

22 VENIREPERSON: Okay.

23 THE COURT: We don't give individuals -- we
24 don't grade them on citizenship as to whether or not they are
25 death penalty jurors, death penalty qualified, not that at

1 all. We only ask that you be honest with yourself and of
2 course thereby being honest with the attorneys and of course
3 Mr. Murphy as well. We're now in the process of individual
4 questioning, which is allowed by Texas law at the request of
5 either the State or the defense. Both sides in this case
6 have indicated to me that they are availing themselves of
7 that portion of the law, so that's why we're in individual
8 questioning.

9 We anticipate completing this jury selection within
10 a few weeks hopefully. Based on past experience that I've
11 had in a number of these matters, I like to give the
12 attorneys a little bit of time after the jury has been
13 selected before we begin right full blown into the
14 testimonial stage of the trial, thereby avoiding the delay
15 with regard to matters of evidence and witnesses, schedules
16 and matters such as that. Having said that, we anticipate
17 beginning the testimonial stage of the trial on Tuesday, the
18 29th of May. That's the day after Memorial Day will be
19 celebrated. Anticipate the trial will last five to seven
20 work days, absent media coverage that I hopefully will not
21 result in the jury being sequestered. Not going to get
22 locked up at night. I always have to leave that out there
23 and hopefully anticipate that will not happen.

24 If the attorneys should determine you to be one of
25 the 12 individuals to take a seat over to the left, is there

1 anything in your personal or professional or business
2 schedule that would prevent your returning on the 29th to
3 participate as a juror in this case?

4 VENIREPERSON: Not to my knowledge.

5 THE COURT: Okay. Fine. Ms. Parker, I've
6 already indicated to you that the Supreme Court of the United
7 States has indicated that to be constitutionally permissible,
8 before an individual can be given the death sentence, there
9 must, number one, be a murder as opposed any other kind of
10 criminal act, but it must be something in addition to murder,
11 an aggravating factor the Court has indicated a number of
12 times.

13 In this case the State has alleged in the
14 indictment, the charging document, the allegation against Mr.
15 Murphy, that it was a murder during the course of kidnapping
16 and/or robbery. Failing to prove the kidnapping or the
17 robbery would make it murder, not capital murder. Punishment
18 5 to 99 years or life. Only if it's murder plus an
19 aggravating factor, either kidnapping and/or robbery, would
20 it then be elevated to a death penalty eligible situation.

21 VENIREPERSON: Okay.

22 THE COURT: Are you with me so far?

23 VENIREPERSON: Yes.

24 THE COURT: For the sake of your valuable
25 time, let us assume hypothetically that you're a juror, you

1 and the other 11 jurors have completed the guilt/innocence
2 stage of the trial and you have found, based upon the law and
3 the evidence, Mr. Murphy guilty of capital murder. The only
4 two options that would be open on the matter of punishment
5 would be either life or death. And a life sentence under
6 Texas law means that an individual would serve 40 calendar
7 years in confinement before being eligible for release on
8 parole. There is no guarantee after 40 years the
9 penitentiary doors would fling open and he would be let go.
10 But the eligibility under the law would begin at that time.

11 There is a built-in preference, statutorily, when
12 going into the penalty stage of a capital case. The statute
13 favors a life sentence as opposed to death. And I think
14 there is no one in this room who would disagree without being
15 presumptive -- I'm not including you, but the rest of us
16 would think that inasmuch as death is the optimum punishment
17 that society can inflict on a fellow human being, that's the
18 way it should be. It shouldn't be easy, quote, unquote, to
19 get a death sentence.

20 VENIREPERSON: Right.

21 THE COURT: And Texas law realizes that
22 certain matters in the penalty stage of a trial might be
23 satisfied to the jury's satisfaction before death as opposed
24 to life can be imposed. Are you with me?

25 VENIREPERSON: Yes.

1 THE COURT: If at any time I'm going too fast,
2 tell me to slow down, say stop --

3 VENIREPERSON: Okay.

4 THE COURT: -- and we'll go over it again.

5 Look with me, if you will, to your left at the
6 special issues. The attorneys and I anticipate, if indeed we
7 get to the penalty stage of this trial, the capital verdict,
8 that the jury will be called upon to answer those two
9 questions. Why don't you read those to yourself after which
10 I'll have a comment or two, after which the attorneys will
11 have some comments as well.

12 VENIREPERSON: Okay.

13 THE COURT: Have you completed it?

14 VENIREPERSON: Yes.

15 THE COURT: Thank you. Now, Ms. Parker, let
16 me explain to you Special Issue Number 1. The responsibility
17 of proving that in the affirmative or as a yes lies with the
18 State, Mr. Davis, Ms. Miller. If they are able to satisfy
19 the jury that Special Issue Number 1 should be answered in
20 the affirmative or yes, only then need the jury go on to
21 Special Issue Number 2.

22 VENIREPERSON: Okay.

23 THE COURT: Unlike Special Issue Number 1,
24 Special Issue Number 2, neither side has -- well it would be
25 called the burden of proof, the responsibility of convincing

1 the jury either way. If in answer to Special Issue Number 2,
2 at the conclusion of the deliberations by the jury, all 12
3 jurors decide that that issue should be answered no, having
4 previously answered Special Issue Number 1 yes, a yes to one,
5 a no to Number 2 requires under Texas law that I sentence in
6 this case Mr. Murphy to death. Any other configuration of
7 answers other than yes and no, it's a life sentence.

8 Are you with me?

9 VENIREPERSON: Yes.

10 THE COURT: Now, to be a prospective qualified
11 juror, to be what the United States Supreme Court on a number
12 of occasions has said, quote, unquote, death qualified, a
13 juror must have no preconceived notions going into the trial.
14 Let me give you a secret. The quickest way to eliminate
15 yourself from consideration is for you to tell us you want to
16 be on this jury. Oh, all of us involved in this process have
17 heard jurors, prospective jurors seated where you now find
18 yourself, question is asked, would you like to be a juror on
19 this case, and I mean they're just chomping at the bit.
20 Whoa, they've got an agenda.

21 VENIREPERSON: Right.

22 THE COURT: We don't know necessarily what it
23 is, but we are not looking for people that are going to stand
24 in line wanting to be a juror in a capital case. We are
25 looking for individuals that will be sincere, will be

1 conscientious, will be honest with themselves, carefully
2 evaluate the evidence, and let the chips fall where they may.
3 We require -- the law requires to be a prospective qualified
4 juror, especially with regard to Special Issue Number 2, you
5 must tell yourself and thereby us, yes, if mitigating
6 evidence is presented, I will listen to it. I will carefully
7 evaluate it, and if I determine the mitigating evidence,
8 whatever it is, and it's not going to be defined, so it's
9 whatever you, Ms. Parker, say it is, the whole water front is
10 open. If you say it's mitigating, it's mitigating. You must
11 be willing to listen to evidence that is presented from
12 whatever source. If you decide it's mitigating and rises to
13 that level as a result of which Mr. Murphy should live, not
14 die, give effect to that careful consideration and answer
15 Special Issue Number 2 yes.

16 See, if you answer Special Issue Number 1 yes and
17 Special Issue Number 2 yes, it's a life sentence. A yes to
18 Number 1 and a no to Number 2 is death.

19 Are you willing as a prospective juror to tell Mr.
20 Murphy, the attorneys, and I that if mitigating evidence is
21 presented, that you will listen to it, evaluate it, and then
22 decide whether as a result of it the defendant should live
23 and not die? Are you willing to do that?

24 VENIREPERSON: Yes, I think I can do that. I
25 feel pretty strongly that if it's proven that a person takes

1 another person's life, that they should pay the same way.

2 But I would listen to all of the evidence --

3 THE COURT: Do you think just because a person
4 has been found guilty of murder, they should in all cases
5 automatically get a death sentence?

6 VENIREPERSON: No.

7 THE COURT: But in some cases they should?

8 VENIREPERSON: Yes.

9 THE COURT: Do you think it's on a
10 case-by-case basis?

11 VENIREPERSON: Yes.

12 THE COURT: Without further adieux, allow me
13 to reintroduce from the Dallas District Attorneys Office --
14 Mr. Davis, will you be handling the questions or will Ms.
15 Miller?

16 MR. DAVIS: Yes, Your Honor, I will.

17 THE COURT: Thank you. Mr. Davis.

18 JANET PARKER

19 was called as a venireperson by the Court and, after having
20 been first duly sworn, testified as follows:

21 Voir Dire Examination

22 By Mr. Davis:

23 Q. Good afternoon again, Ms. Parker. How are you?

24 A. Fine.

25 Q. As the Judge told you, my name is Greg Davis. Along

1 with Mary Miller, I represent the State of Texas in this
2 case. I've been given about 30 minutes to speak with you.
3 During that time we'll talk a little bit more about the death
4 penalty in Texas. We'll talk about some general principles
5 that apply in all criminal cases. And then we may go over
6 some of the information that you have in your questionnaire.
7 As best you can, just relax. There are no right or wrong
8 answers here. Most of the questions that I'm going to be
9 asking this afternoon deal with how you feel about something,
10 what's your opinion about something. And I've heard enough
11 of these responses to know that everybody feels differently.
12 And as long as you tell us how you honestly feel, that's
13 really all we need this afternoon. Okay?

14 A. Okay.

15 Q. Let me -- let me just be very up front with you and
16 tell you what the State's position in this case is because
17 it's not going to change. It's going to remain the same
18 throughout this case. The State of Texas feels that it has
19 the type of evidence in this case that will persuade a jury
20 to find the defendant guilty of capital murder. We also feel
21 that we have the type of evidence that we'll persuade the
22 jury that the proper answers to Special Issue Numbers 1 and 2
23 are yes and no, which would result in a death sentence in
24 this case. That is our position. It will not change. And
25 at the punishment phase of this trial, I can guarantee you

1 that will be our position. If you will, simply recall what
2 the Judge says. We'll ask you to base your verdict on the
3 evidence that you hear in this case, nothing more, nothing
4 less. Okay?

5 A. Okay.

6 Q. Ms. Parker, let me just go back about a week and a
7 half to when you came to the Central Jury Room, and let me
8 ask you, when the defendant, Jedidiah Isaac Murphy, was
9 introduced to you by Judge Entz and you were told that the
10 State was seeking the death penalty against him, can you tell
11 me what went through your mind at that time? What was your
12 first impression of these proceedings?

13 A. It was a new experience for me. I had never been
14 called for jury to a capital murder case where the death
15 penalty is an issue.

16 Q. Uh-huh.

17 A. I had a lot of curiosity to -- to know what the
18 details were, but other than that, really no decision or
19 impression.

20 Q. Okay. You've had some time to reflect on the
21 situation, I guess, now before you come down and you've been
22 kind enough to tell Judge Entz what you're feelings are and
23 let me just tell you that people come down here with all
24 sorts of feelings about the death penalty. I've had some
25 people who say they don't like the death penalty

1 particularly. I've had some people who say they're very much
2 in favor of the death penalty. All those people can be
3 qualified jurors as long as they can tell us honestly that
4 they can follow the law given to them by Judge Entz. That's
5 really the key, because we may all disagree about some parts
6 of the law, but when it comes to the law, he'll have the
7 final say on it. And if he tells you the law is such and
8 such, you're duty bound by your oath as a juror to follow
9 that law.

10 Some people tell us I don't think I'm disciplined
11 enough where I can do that. Other people tell us I am the
12 kind of person who has the necessary discipline to follow the
13 law given by the Judge to be on a case like this.

14 In general, Ms. Parker, do you feel like you are the
15 type of person who is disciplined enough to follow the law
16 given to you by Judge Entz?

17 A. Yes.

18 Q. And I believe you've told us you believe in this
19 case if the State of Texas meets its burden of proof and we
20 prove to you beyond a reasonable doubt that Jedidiah Isaac
21 Murphy is guilty of capital murder, I take it that you could
22 find him guilty as required by the law, couldn't you?

23 A. Yes.

24 Q. And if the evidence was such that Special Issues
25 Number 1 and 2 in your mind should be answered yes and no,

1 resulting in a death sentence, that you could return those
2 answers also; is that also fair?

3 A. Yes.

4 Q. Ms. Parker, let's take a few minutes then and let's
5 talk about some general principles that apply in this case
6 and every case here in the State of Texas. The first one is
7 the presumption of innocence. And a lot of these things
8 Judge Entz has already gone over, but just in an abundance of
9 caution to be fair here, because I think everybody is in
10 agreement this is a very serious matter. I've been through
11 enough of these to know that in these proceedings no matter
12 what happens, whatever the outcome is, it's very important
13 that we all be able to leave this courtroom knowing that all
14 the rules were followed properly and Jedidiah Murphy received
15 a fair trial. Would you also agree with that?

16 A. Yes.

17 Q. First of all, the presumption of innocence. As he
18 sits right here, Mr. Murphy is presumed to be innocent of the
19 offense of capital murder, and he is -- he's entitled to that
20 presumption --

21 MR. DAVIS: Your Honor, if we could, we've got
22 a matter to take before the Court.

23 (Side bar conference.)

24 THE COURT: Thank you, Ms. Parker. You are
25 excused from consideration as a juror.

1 MR. DAVIS: Thank you.

2 VENIREPERSON: Uh-huh.

3 (Venireperson excused from courtroom.)

4 MR. DAVIS: If the record could reflect, Your
5 Honor, that the State and defense agreed to excuse Juror
6 Number 144.

7 MR. BYCK: So agreed, Your Honor.

8 (Venireperson brought forward.)

9 THE COURT: Good afternoon.

10 VENIREPERSON: Hi.

11 THE COURT: Name Dorothy Jennings?

12 VENIREPERSON: Yes, sir.

13 THE COURT: Welcome back. Ms. Jennings, may I
14 ask that you raise your right hand and be sworn in, please.

15 (Venireperson sworn.)

16 VENIREPERSON: I swear.

17 THE COURT: Thank you. You may lower your
18 hand.

19 Ms. Jennings, I want to you sit back, relax as much
20 as you can. I trust when I informed you that you were among
21 those March 2nd that remain under consideration, perhaps a
22 lump came into your throat and you thought, uh-huh, what did
23 I either do or not do in my questionnaire that -- how come
24 those people get to go and I have to come back. Got a call
25 from my Court Administrator and maybe lost a little bit of

1 sleep last night. I hope not.

2 VENIREPERSON: No.

3 THE COURT: I assure you we want to make your
4 stay down here with us for the next hour as comfortable
5 physically and mentally as we can under the circumstances
6 make it.

7 VENIREPERSON: Okay.

8 THE COURT: Let me introduce you or
9 reintroduce the individuals whom you see seated at the
10 counsel tables before you begin. Table to the left,
11 gentleman in the dark suit, lead prosecutor for the State in
12 this matter, the Honorable Greg Davis.

13 MR. DAVIS: Good afternoon.

14 THE COURT: Seated next to him is his
15 co-counsel, the Chief Prosecutor assigned to this the 194th
16 District Court, the Honorable Mary Miller.

17 MS. MILLER: Good afternoon.

18 THE COURT: Moving on to the next table, we
19 have two of the three attorneys representing Mr. Murphy.
20 Absent is an attorney by the name of Jane Little. Ms. Little
21 is a former Chief Prosecutor in the District Attorneys
22 Office, board certified criminal law specialist. She is a
23 little bit under the weather and to avoid us catching
24 whatever she has, we have suggested to her that perhaps her
25 health is such that she should excuse herself, return with us

1 when she is a bit -- a bit better equipped to do so. Two
2 attorneys, we'll begin with the Honorable Jennifer Balido.

3 MS. BALIDO: How are you?

4 VENIREPERSON: Fine.

5 THE COURT: The Honorable Michael Byck, with
6 the grey hair, mustache, also a board certified criminal law
7 specialist.

8 And to the right going down the line is the accused,
9 as I've previously introduced to you and the other panel
10 members, Mr. Jedidiah Isaac Murphy.

11 THE DEFENDANT: Good afternoon, ma'am.

12 THE COURT: Ms. Jennings, let's jump right
13 into the matters at hand.

14 VENIREPERSON: Okay.

15 THE COURT: Texas law provides that when the
16 State is seeking a death sentence in a capital murder case,
17 upon request by either side, either the State or the defense,
18 prospective jurors can be questioned individually. I want to
19 assure you that the attorneys on both sides in this case have
20 utilized that provision of the law, so I don't want you to
21 think that it's either the State or the defense or me that's
22 making you go through this ordeal. If you have anybody to
23 complain to, it's the legislature, I hope you won't subscribe
24 any fault in them as a result because of the serious
25 questions involved. Let's assume hypothetically a few things

1 at the outset. May we?

2 VENIREPERSON: Okay.

3 THE COURT: Let's assume that the jury has
4 been selected and that you are one of the 12 jurors. We
5 hopefully anticipate that process will be completed within a
6 matter of a few weeks. All of us here have gone through
7 these matters in one form or fashion, and it's somewhat a
8 laborious and tedious process. But we anticipate finishing
9 it within a few weeks. I like, based on past experience, to
10 give the attorneys for both sides a couple of weeks for final
11 preparation so a timely flow of evidence can be presented to
12 the jury so they won't be inconvenienced by unnecessary
13 recesses.

14 Having said that, we anticipate beginning the
15 testimonial stage of the trial on Tuesday, the 29th of May,
16 the day after Memorial Day is celebrated. Do you know of
17 anything in your schedule that if you're selected as a juror
18 that would prevent your coming back on the 29th?

19 VENIREPERSON: No, sir.

20 THE COURT: Likewise, knocking on wood, we
21 anticipate the jury will not be sequestered. I must leave
22 that out as an option -- but we're not anticipating you will
23 be locked up at night so you will be free to go home, free to
24 be home, with friends and family at least as this trial
25 progresses, at least at the outset.

1 Ms. Jennings, let's furthermore assume not only that
2 you're a juror but you and your fellow 11 jurors have
3 completed the -- what we call the guilt/innocence stage of
4 the trial and that you have found in this case Mr. Murphy
5 guilty of capital murder. By that I mean you have found
6 beyond a reasonable doubt that Mr. Murphy took the life of a
7 certain named individual during the course of which there was
8 a kidnapping and/or a robbery. If you were to find that the
9 aggravating factors, the kidnapping or robbery, had not been
10 proven to your satisfaction beyond a reasonable doubt, but
11 you did find that he committed a murder, would not be a
12 capital case. It would be what we call under the Penal Code
13 a first degree murder and the penalty range would be 5 to 99
14 years or life, with an optional fine not to exceed \$10,000.
15 But if based upon the law and the evidence in concert with
16 the other 11 jurors you found him guilty of capital murder,
17 then we would go into the penalty stage of this trial.

18 Statutorily the legislature has created a preference
19 for a life sentence as opposed to death. And with a few
20 exceptions -- because obviously we don't want to be
21 presumptive about how you feel about it, but we think that is
22 the correct way statutorily for the law to be because of the
23 ultimate seriousness of a death sentence, the finality. So
24 going into the penalty stage of a capital murder case, the
25 defendant begins with a life sentence. In a life sentence if

1 you'll recall when I said back on the 2nd of this month, of
2 March, 40 calendar years, day-for-day, week-for-week,
3 month-for-month before the eligibility of parole is
4 occasioned. Doesn't mean 40 years, the penitentiary doors
5 swing open and out you go. Eligibility begins then. Only if
6 certain matters are brought to a jury's satisfaction, what we
7 call special issues, does that life sentence change to a
8 death sentence.

9 The attorneys and I anticipate that if the jury
10 returns in this case a verdict of guilty of capital murder,
11 the two special issues you see to the left will be called
12 upon by the jury to answer. Let me ask to you take a moment
13 or two of your time, read them to yourself, after which
14 we'll -- I'll talk about them a little bit, the attorneys
15 will a bit more. Read them to yourself, if you will, please.

16 (Venireperson given time to read.)

17 THE COURT: Have you completed that?

18 VENIREPERSON: Uh-huh, yes, sir.

19 THE COURT: For a moment let me mention
20 Special Issue Number 1. The responsibility of proving that,
21 if they can, lies with the State. If based upon the
22 evidence, you and your fellow 11 jurors answer Special Issue
23 Number 1 in the affirmative or a yes, only then do you need
24 to go on to Special Issue Number 2. Because if you've
25 answered Special Issue Number 1 no, it's an automatic life

1 sentence and there's no need for to you go to Number 2. If
2 however you answer Special Issue Number 1 yes, then you and
3 your fellow 11 jurors go to Special Issue Number 2.

4 Neither side has what we call the burden of proof or
5 the responsibility of going forth with the evidence on Number
6 2. I will not be giving you in the Court's charge, the
7 instructions, a definition of mitigating evidence.
8 Mitigating evidence is whatever a juror believes it to be.
9 If you say it's mitigating, it's mitigating, period. End of
10 discussion.

11 The United States Supreme Court on a number of
12 occasions have said that to be a constitutionally qualified
13 juror in a capital proceeding, a juror must tell us that they
14 are willing to listen to mitigating evidence if it is
15 presented and then determine if as a result of which it rises
16 to the level as a result of which a defendant should live and
17 not die.

18 Are you willing, if mitigating evidence is
19 presented, to listen carefully, evaluate it, and make that
20 determination?

21 VENIREPERSON: Yes, I am.

22 THE COURT: Some people indicate, well, if
23 you're guilty of capital murder, it's automatic death. Well,
24 that's not the law in the United States, nor in Texas. And I
25 assure you, 194th District Court. Only if Special Issue

1 Number 1, apologize for pointing my finger, is answered by
2 the jury yes and Special Issue Number 2 by law, as the
3 elected Judge of this particular court, I'm required to
4 sentence Mr. Murphy to death. That's the law. Unlike a
5 number of other states, the jury's answers are not
6 recommendations to the trial judge. The jury makes the
7 determination. Not alone. 12 of you collectively. But each
8 of you have an independent voice. If all of those
9 independent voices coalesce or come together, that's the
10 result. We have no secrets. I want to you know the effect
11 of those answers so you'll know going in what the results
12 are.

13 Now, you cannot however say after you've heard the
14 guilt/innocence stage of the trial, well, I've heard enough,
15 I'm going to fashion my answers such that he gets the death
16 sentence. Whoops, uh-oh, we've got a problem. You can't do
17 that. You've got to take those Special Issues 1 and 2 after
18 you have heard evidence in the penalty stage of the trial --
19 oh, you can utilize the facts and circumstances that you
20 heard in the first stage of the trial, but you cannot go into
21 the penalty stage deliberations or penalty stage of the trial
22 saying, well, I am going to automatically fashion my answers
23 to give either life or death. You can't do that. You've got
24 to look at it through a different set of glasses, if you
25 will.

1 Are you willing to do that?

2 VENIREPERSON: Yeah, I am.

3 THE COURT: It's tough. Do you want me to
4 tell you how to get off of this jury? If you would tell us
5 that you want to be a juror. We've had people, those of us
6 in here involved with this in the past, we've heard persons
7 say, oh, I want to be a juror in a capital case. Whoops.
8 They've got an agenda. Oftentimes we know what that agenda
9 is. Sometimes we don't. We want individuals who can and
10 will be conscientious, will be sincere. And if you will, let
11 the chips fall where they may.

12 Are you willing to do that?

13 VENIREPERSON: Yes.

14 THE COURT: Reluctantly?

15 VENIREPERSON: Yeah.

16 THE COURT: We will begin with the State. Mr.
17 Davis.

18 MR. DAVIS: Yes, Your Honor.

19 Thank you. May it please the Court.

20 DOROTHY JENNINGS

21 was called as a venireperson by the Court and, after having
22 been first duly sworn, testified as follows:

23 Voir Dire Examination

24 By Mr. Davis:

25 Q. Good afternoon again, Ms. Jennings. How are you?

1 A. I'm fine. Thank you.

2 Q. My name is Greg Davis. Along with Mary Miller, I
3 represent the State of Texas in this case. And for the next
4 30 minutes, I'll have a chance to speak with you and we'll go
5 over the death penalty law in a little bit greater detail.
6 We'll talk about your questionnaire a little bit. And we'll
7 talk about the general principles that apply in this case and
8 any other case. And I want you to relax and understand there
9 are no right or wrong answers. Most of the questions that
10 I'm going to ask you this afternoon deal with how you feel
11 about something, what your opinions are. And I've done
12 enough of these to know that people have different opinions
13 about these matters. Don't worry about that. As long as we
14 know how you honestly feel about this, that's all we really
15 need from you. Okay?

16 A. Okay.

17 Q. Let me tell you up front what our position is,
18 because it's not going to change. The State of Texas in this
19 case firmly believes that we have the type of evidence that
20 will persuade a jury to find the defendant guilty of capital
21 murder in this case. Further, we think that we have the type
22 of evidence that will persuade a jury to answer Questions
23 Number 1 and Number 2 yes and no, which will require Judge
24 Entz to impose a sentence of death against Mr. Murphy.
25 That's our position.

1 On punishment I will stand before you and I will ask
2 you to answer Special Issues Number 1 and 2 yes and no,
3 knowing that a death sentence will result. That's our
4 position. Obviously, the defendant has three very fine
5 attorneys. There's a difference of opinion. That's why we
6 need 12 jurors to make this decision in this type of case.

7 Ms. Jennings, I want to go back with you just a few
8 days to when you were in the Central Jury Room. You remember
9 that mob scene where everybody was in there?

10 A. Oh, yes.

11 Q. And go back to the time where the defendant was
12 introduced to you and the time when Judge Entz told you that
13 the State was seeking the death penalty against him. And do
14 you remember what was going through your mind when you
15 learned that we were trying to take the life of Jedidiah
16 Isaac Murphy in this case?

17 A. First thing that probably went through is this is my
18 first time to jury duty and, boy, did I get picked.

19 Q. You drew the black bean real quick, didn't you?
20 You've had some time now, I guess, to reflect on the matter
21 and think about some of these issues, I trust. And I just
22 want to kind of give you an opportunity now to tell us how
23 you feel about participating in this type of case. I take it
24 from your answers to Judge Entz this isn't something that you
25 necessarily want to do; is that right?

1 A. Correct.

2 Q. But I've heard a lot of people express, well, it may
3 not be something that I want to do, but understand as a
4 citizen I have certain obligations and if you choose me to
5 sit on the jury, then I'll do my civic duty, I'll listen to
6 the evidence and I'll render my decision accordingly. Is
7 that kind of where you fit in on this?

8 A. Correct.

9 Q. I want to talk to you a little bit about more about
10 the death penalty, about your feelings about that, because I
11 note from talking to people that there are -- a lot of people
12 come down here and they have told us like you have, that you
13 believe in the death penalty, that you think it's appropriate
14 in some cases, but I know sometimes it can be different when
15 you're sitting in that chair and it gets to be a bit
16 personal. You know, in the abstract a lot of people tell us
17 that they're glad we gave it, wouldn't change it, glad you're
18 having the trial. But if you look at Mr. Murphy, you see
19 there's nothing abstract about him. He's a living, breathing
20 human being. If the State of Texas prevails in this case,
21 there will be come a day in Huntsville, Texas, when he will
22 be strapped on a gurney, his life will taken from him.
23 That's the reality. I don't go through that with jurors to
24 be morbid or grim, but that's the reality of it in Texas.
25 We've had a number of executions already. And I have every

1 reason to believe if a death sentence is handed down in this
2 case, it will be carried out some date in the future.

3 Having said that, most of the people have told me
4 that now that I'm down here, I don't think that I could
5 personally take part in that. Maybe another kind of case I
6 would make a great juror, but not in this kind of case. To
7 those jurors I always say there's no shame in that. I
8 respect your opinion. If that's how you honestly feel, at
9 that time we'll go on to the next juror and eventually we'll
10 get our 12 jurors in this case.

11 I just need to know from you whether this is the
12 type of case, Ms. Jennings, that you think you can
13 participate on.

14 A. Well, that's what everybody asked me. Can you live
15 with this? As long as the evidence is given to me and there
16 is no shadow -- there is no doubt in my mind, I feel that I
17 can.

18 Q. Okay. All right. We'll talk about that in just a
19 second, about the presumption of proof -- about the
20 presumption of innocence, burden of proof in this case. And
21 let's just go on with that right now. I think the Judge has
22 gone over some of this, but again, just to be -- just to be
23 careful, just to be fair, because I think it's important. No
24 matter what the result is in this case, and I've been through
25 enough of these to know it's important to know when we leave

1 this courtroom on that last day that we have no second
2 guessing about what happened, we have no doubt that all the
3 rules were followed, that Mr. Murphy received a fair trial.

4 Would you agree with me there?

5 A. Yes.

6 Q. One of the first rights and protections that he has
7 is he has the presumption of innocence. As he sits here
8 right now, Mr. Murphy is presumed innocent of the offense.
9 Now, that's notwithstanding the fact that we know several
10 things have already happened. He's already been arrested for
11 the offense of capital murder. He's been charged with that
12 offense. And he's been indicted by the Dallas County grand
13 jury. And we've already begun jury selection. But still, as
14 he sits here today, he's presumed innocent. He remains
15 innocent in the law's eyes until the State of Texas proves
16 his guilt beyond a reasonable doubt. And when we do that,
17 that presumption of innocence disappears.

18 Can you assure all of us that as he sits right here
19 right now that you can presume the defendant innocent of this
20 offense?

21 A. Yes.

22 Q. As I've just told you, the burden of proof is on the
23 State of Texas. We have to prove all the allegations in the
24 indictment beyond a reasonable doubt.

25 Now, you've said on your questionnaire about

1 total -- total doubt or shadow of a doubt. That's not the
2 burden of proof. I've heard some people say, you know, I can
3 live with the burden of reasonable doubt in maybe a traffic
4 ticket or misdemeanor or maybe some other felony offense, but
5 when it comes down to capital murder, I'm going to hold the
6 State of Texas to a higher burden even though the law doesn't
7 require me to do that. You know, that's fine if you feel
8 that way. And you can understand this is a very serious
9 matter, but again, what we have to do is prove this case
10 beyond a reasonable doubt.

11 I'd submit to you that the only way you could have
12 absolutely zero doubt about it would to have been an
13 eyewitness to this. Can you see that?

14 A. Yes.

15 Q. All right. And again, reasonable doubt is a very
16 high standard in this type of case, and we would fully expect
17 you and want you to hold us to that burden of proof. We
18 don't need any help. We'll meet our burden of proof. And
19 what I need to know is will you hold the State of Texas to
20 that burden of proof?

21 A. Yes, I will.

22 Q. Okay. If we prove our case beyond a reasonable
23 doubt, you can find the defendant guilty, I take it; is that
24 right?

25 A. Yes.

1 Q. And if we fail to meet that burden of proof, you'll
2 find him not guilty; is that right, also?

3 A. Yes.

4 Q. Now, let me just -- let me just tell you in this
5 case in general what we have to prove. We have to prove that
6 on or about a certain day in Dallas County, Texas, that this
7 defendant, Jedidiah Isaac Murphy, intentionally took the life
8 of a woman by the name of Bertie Cunningham and that he did
9 so by shooting her with a firearm or by drowning her in
10 water. And that -- all that was done in the commission or
11 attempted commission of the offense of robbery or kidnapping.
12 That's what we've got to prove in this case.

13 Now, it's important to remember that we've got to
14 prove everything in that indictment. Let me give you an
15 example, and I may give you some examples this afternoon. I
16 don't think any of these will come to pass. Some of them are
17 kind of ridiculous, but they point out a principle here.

18 Let's say in a case like this, capital murder case,
19 we proved everything to your satisfaction that we have the
20 right person, we proved how that individual was killed, that
21 they were killed during the course of a robbery or a
22 kidnapping, all to your satisfaction, but we failed to prove
23 that the offense occurred in Dallas County, Texas.

24 Now, a couple of things would happen. Probably Ms.
25 Miller and I would be looking for a new job. That's the

1 first thing. But the second thing would be this, under that
2 circumstance, since the State did not prove all of the
3 allegations in that indictment beyond a reasonable doubt, the
4 law would require you to go back to that jury room and find
5 the defendant not guilty. You see how that would be very,
6 very difficult? You know, you have a very dangerous
7 individual who has taken a life, who has committed a capital
8 murder, but still the law -- your oath as a juror to render a
9 true verdict according to the law and the evidence would
10 require you to say not guilty. And that would be our
11 responsibility. That would be our fault. But still, you'd
12 have the duty of saying not guilty.

13 Even under that kind of extreme circumstance, do you
14 still feel like you could hold the State to its burden of
15 proof?

16 A. Yes.

17 Q. And again, I don't anticipate that happening.
18 That's kind of an extreme example, but it does point out we
19 have to prove everything beyond a reasonable doubt here.

20 Let's talk about another right that the defendant
21 has, and that's the right to remain silent. In this country
22 no one can force a defendant to give testimony against
23 himself to incriminate himself. He has the protection of the
24 5th Amendment. The law in this case is going to say that if
25 this defendant chooses not to testify, that you can't

1 consider that and you can't hold that fact against him.

2 Do you feel like you could follow that law?

3 A. Yes, I do.

4 Q. Essentially what the law says, look to the other
5 evidence presented. If the State has proved its case beyond
6 a reasonable doubt, you find him guilty. If we haven't met
7 our burden of proof, you find him not guilty.

8 Does that sound fair to you?

9 A. Yes.

10 Q. I know in your questionnaire we asked -- I think the
11 question was asked about people not testifying, and I believe
12 that you said I would hope that you could testify in your own
13 behalf, but believe that our lawyers can really twist things
14 around and anger you into saying things that could be taken
15 wrong.

16 A. Right.

17 Q. You're right. Lawyers can do that at times. That
18 may be one reason why a person wouldn't want to testify.
19 Maybe they're afraid their words will be twisted. We can go
20 through a lot of other examples. Maybe they don't speak
21 English. Maybe they stutter. There could be other reasons.
22 Maybe they know that they're guilty and they're going to be
23 lying -- or caught lying if they testify. That's another
24 reason. Another reason could be under law if an individual
25 has prior felony convictions, those facts can be brought out

1 while testifying. They can be used by a jury to judge an
2 individual's credibility. There are a lot of reasons why.
3 But again, the law says if an individual doesn't testify,
4 disregard it, try it based on the facts presented.

5 I take it you don't have any problem with that?

6 A. Right.

7 Q. Let's talk about another right that all defendants
8 have. They have a right to discovery. I know a lot of
9 people come down here and they think the powerful State of
10 Texas and the poor citizen accused over here and what an
11 imbalance there is. But let me tell you about the right of
12 discovery that all defendants have. First of all, under the
13 law I'm obligated as the prosecutor, if I know of any
14 evidence that tends to show that this defendant is not
15 guilty, I'm duty bound to turn it over to them as soon as I
16 know about it. That's one right he's got. If I know about
17 evidence that tends to mitigate his punishment, anything that
18 may be an issue there in Special Issue Number 2 in a death
19 penalty case, again, I'm obligated by the law to turn that
20 over as soon as I learn about it, also. I'm also obligated
21 to give them a complete list of all potential witnesses that
22 will be called by the State of Texas in this case. And I'm
23 obligated to do that before this trial ever begins. I'm also
24 obligated to show them all exhibits that may be offered
25 during the course of the trial so they can examine them prior

1 to trial, too. And finally prior to this trial, this
2 defendant will have all the police reports. He'll have all
3 the scientific reports generated on behalf of the State of
4 Texas before the first witness is ever called.

5 Now, we don't have reciprocal discovery in the State
6 of Texas, so the defendant does not have the same obligations
7 to me. That's fine. But I want you to understand that there
8 are certain rights and procedures here that we go through to
9 insure that people like Jedidiah Murphy receive a fair
10 trial.

11 Does that seem fair?

12 A. Yes.

13 Q. Let's talk about one of your main duties as a juror
14 would be to judge the credibility of witnesses. And that is
15 an important thing. You'll have to listen to witnesses to
16 determine if you believe them or not. Something you do in
17 everyday life, I'm sure. You'll do the same thing here.

18 And what the law asks you to do there, Ms. Jennings,
19 is to keep an open mind, listen to the person, see what they
20 have to say before you decide whether you want to believe
21 them or not. You see, the problem would be if you said, you
22 know, I just don't like, let's say bankers or plumbers,
23 whoever it may be, and for that reason, I don't care what
24 that person says, I'm never going to believe a word out of
25 their mouth. Okay. The law says you can't do that.

1 One other thing the law says with regards to
2 defendants testifying, is even though a defendant is presumed
3 to be innocent at the beginning of a trial, he is not
4 presumed to be a truth teller when he hits that stand up
5 there. You're to judge him by the same standards that you
6 judge all the other witnesses in a case. Everybody gets
7 equal treatment under the law.

8 Do you think that you could do that in this type of
9 a case?

10 A. Yes, I do.

11 Q. I want to talk a little bit about your experience in
12 judging credibility of individuals. Ms. Jennings, have you
13 ever dealt with anybody who you believed was a habitual liar?

14 A. Yes.

15 Q. Okay. Somebody that doesn't matter what they're
16 talking about, they're going to lie about it to some degree
17 or another?

18 A. Yes.

19 Q. Were you able to make some determination about when
20 they were telling you the truth and when they were lying?

21 A. To some degree, yes.

22 Q. Kind of tough, isn't it?

23 A. Yeah, it is.

24 Q. Can you think of some ways that might be helpful in
25 determining whether somebody is habitually lying about a

1 matter? Some things that might be helpful to know?

2 A. Well, the more, of course, you know about them, if
3 you know people around them.

4 Q. Right. What do other people think about them for
5 instance?

6 A. Correct.

7 Q. What their reputation is in the community?

8 How about if you found out that person told you one
9 thing and he went back and told another individual an exact
10 opposite story, for instance?

11 A. That happens.

12 Q. It happens. How about if you found that they've
13 told several different versions of the story to several
14 different people? Do you think that might help in
15 determining whether that person has told you the truth or
16 not?

17 A. Yes.

18 Q. Do you think it's possible that people charged with
19 criminal offenses might be motivated to lie to gain some
20 advantage here in the criminal justice system?

21 A. Yes.

22 Q. Do you think that might be particularly true if
23 they're facing a possible death sentence?

24 A. Yes.

25 Q. Have you ever known anyone who claimed to have

1 amnesia about certain matters?

2 A. No.

3 Q. Again, do you think it might be helpful to know with
4 regards to whether or not they're telling you the truth about
5 amnesia, just what their memory may be about other events?
6 Do you think that might be helpful?

7 A. Yes.

8 Q. For instance, if I came to you and told you that I
9 remember waking this morning, I remember getting dressed,
10 I've got absolutely no memory about what I had for breakfast,
11 but I remember the next 20 things that happened right after
12 breakfast for instance. Do you think you might doubt whether
13 I really have amnesia about what I had for breakfast or not?

14 A. I would.

15 Q. Okay. All right. One other question with regards
16 to the burden of proof in this case. I need to know whether
17 you could fairly apply the law in this case, whether you
18 would hold the State of Texas to its burden of proof if you
19 found out that the victim was an 80-year-old female? Could
20 you still do it even in that event?

21 A. Yes.

22 Q. Okay. Thank you. Let's talk about some other
23 matters. When it comes to death penalty, Ms. Jennings, can
24 you think of any cases maybe that you've recently heard about
25 in the media where you thought maybe if I knew more about the

1 facts, maybe the death penalty might be an appropriate
2 punishment in that case?

3 A. If I had to think of one right off the top of my
4 head, no, I couldn't.

5 Q. That's good to know that you don't sit around your
6 home thinking about these types of things.

7 A. Yeah.

8 Q. It's shows you're very normal. Let me talk to you
9 about a case that occurred recently. It's called the Texas 7
10 or Connolly 7. Do you remember that case?

11 A. Yes.

12 Q. Those were inmates who were serving very long prison
13 sentences. In fact, some of them were serving life sentences
14 in a prison unit in South Texas. They escaped from that
15 prison unit. They went to Houston, committed an aggravated
16 robbery in Houston. They came to Dallas, to Irving, where
17 they actually murdered the police officer outside the
18 Oshman's. Are you familiar with that kind of case?

19 A. Yes, I am.

20 Q. Having heard about that, do you think the death
21 penalty would be appropriate for those individuals?

22 A. Yes, I do. I think the death penalty would be
23 appropriate.

24 Q. Okay. Let's talk a little bit about types of
25 evidence, get your feelings about some of these matters

1 because criminal cases can be proven through all sorts of
2 evidence. We may have cases where there are eyewitnesses who
3 come into the courtroom, they sit there on the witness stand
4 and tell you what they saw, what they heard, and then you can
5 take them for whatever you want to. Certainly that occurs in
6 some cases, but there are a number of criminal cases that
7 there are absolutely zero eyewitnesses. The individual that
8 commits the crime makes the decision that he's going to
9 commit the crime in a place and time where no one else would
10 be there to see him or hear him.

11 Do you think that's possible?

12 A. Yes.

13 Q. In those types of cases the State can rely on what's
14 called circumstantial evidence. And when I say
15 circumstantial evidence, what types of things come to your
16 mind? What do you conjure up when I say circumstantial
17 evidence?

18 A. If there was any clothing left behind, footprints,
19 any kind of DNA, or anything like that.

20 Q. Okay. Certainly all those could be. You've
21 mentioned a couple things, DNA or blood. That's becoming, I
22 guess, more common as we go through and we become more
23 sophisticated in blood and DNA analysis.

24 What is your general feeling about the reliability
25 of DNA evidence?

1 A. I think over the years it's been pretty much
2 proven -- I think it's reliable.

3 Q. How about fingerprints? And again, they would fall
4 in -- you talk about shoe prints or footprints, fingerprints
5 would certainly fall in that category. Do you have any
6 feelings about the reliability of fingerprints?

7 A. From what I know, I believe it's reliable.

8 Q. There's another kind of broad category here. I'm
9 going to call them circumstances, you know. Could be
10 something like -- let's say that this evening as you come
11 home, you see me walking out of your front door or running
12 out of your front door and I've got your television under my
13 arm and I'm running towards the car. Okay? Certainly you
14 didn't see me go into your home, you didn't see me pick your
15 television up inside your home, but the circumstances I'm in
16 recent possession of your property and I'm heading out at a
17 fast rate. That can also be a circumstance indicating my
18 guilt.

19 Can you see where there may be circumstances that
20 come together that show an individual's guilt?

21 A. Yes.

22 Q. Another category would be written confessions or
23 written statements given by an accused. You know, in the
24 State of Texas we have certain requirements that have to be
25 met before a jury can consider those sorts of things. But

1 you can see a situation where let's say I commit an offense,
2 no one sees me commit the offense, but later I go down to the
3 police station and say I want to confess that I committed an
4 armed robbery two days ago and I sit down and I give a very
5 detailed statement about everything that I did. That
6 statement could be used as evidence against me. It's
7 circumstantial in a way because it's not an eyewitness, it's
8 not direct testimony.

9 But can you see how that might also possibly be
10 useful in determining an individual's guilt?

11 A. Yes.

12 Q. Do you -- when we talk about confessions, let's talk
13 about one other matter. And I guess it goes to the
14 credibility or believability of a statement. Do you think
15 that there might be situations where an individual comes in
16 and gives a written statement to a police officer where
17 perhaps 80 percent of that statement may be accurate, may be
18 truthful, but the other 20 percent that individual simply
19 decides not to tell the truth to that police officer for
20 whatever reason?

21 A. Yes.

22 Q. Do you think that might be possible, particularly if
23 an individual is facing a very serious criminal charge?

24 A. It could be possible.

25 Q. I guess the bottom line, when we come down on

1 circumstantial evidence, it goes back to the burden of proof
2 in this case, Ms. Jennings, which is this: Do you feel in
3 this type case, capital murder case, if you find a person
4 guilty, there are only two possible sentences, life or
5 possibly death, do you feel you can base your verdict of
6 guilt on circumstantial evidence alone if that circumstantial
7 evidence was strong enough to show you that that person was
8 in fact guilty?

9 A. If it was strong enough, yes.

10 Q. Okay. Fair enough.

11 Let's talk for just a little bit then, Ms. Jennings,
12 about Special Issues Number 1 and 2. We'll talk about
13 capital murder. Capital murder, remember as the Judge has
14 explained to you, is always two things. It's always an
15 intentional murder plus something else. In the State of
16 Texas if you had as what I'm going to refer to as a simple
17 murder, if I kill someone without anything else happening,
18 that's not a death penalty case. If I turn to Ms. Miller and
19 I don't like her hair style today, I shoot her six times, get
20 up and laugh about what I've done, that may be a very
21 horrible offense, but I cannot receive the death penalty in
22 the State of Texas. It must be something else with that. In
23 this case we've said that other thing is that this murder
24 occurred during course of either a robbery or the course of a
25 kidnapping. That's what makes this different. If we prove

1 that along with the murder, makes it a capital murder.

2 Let's take a step back. Let's say in a capital
3 murder case for some reason the State can't prove that other
4 thing that makes it capital. Now we're left with a murder
5 case. Then the punishment is a bit different, and the Judge
6 would instruct you at the end of the punishment phase that
7 you're to go back and actually on a verdict form you'd write
8 in the number of years that you thought was a proper sentence
9 based on all the evidence that you heard. He would also
10 instruct you on that type of case the range of punishment
11 would be anywhere between 5 years in the penitentiary up to
12 99 years or life in the penitentiary, plus an optional fine
13 not to exceed \$10,000. That's the range. It's a very wide
14 range. And you'd have to base that verdict on everything
15 that you heard.

16 Now, here is the key to be a qualified juror, and
17 that is to honestly be able to tell us you have an open mind
18 to the full range of punishment. You see some people come
19 down here and they've already pre-judged and they tell us if
20 you show us an intentional murder case, I'm never going to
21 consider something as little as five years. I don't care
22 what type of facts you have, I don't know how good the
23 defendant was, how sorry the victim was, I've already decided
24 in my mind. I've had people tell me on the other end they
25 could never consider a life sentence. They're not qualified

1 to sit on this type of jury because they've already
2 pre-judged the situation. And the things to keep in mind
3 there is this. You don't know what facts that you'll hear,
4 you don't know the relationship between the parties. Did
5 they have a good relationship over the years, bad
6 relationship, no relationship whatsoever? Was it a spur of
7 the moment kind of situation? Was it a very well thought
8 out, planned, premeditated kind of murder? Did the defendant
9 have a lengthy background where you might want to go high on
10 the punishment, or did he have absolutely no criminal
11 background? Had lived a spotless life up to that point,
12 maybe he'd been a pillar of the community and for whatever
13 reason intentionally took someone else's life. So as you can
14 see, there's a lot of variables, a lot of unknowns.

15 What I need to know from you this afternoon, Ms.
16 Jennings, is do you feel like you could wait until all the
17 facts came in a murder case until you decided what the proper
18 punishment was? And then if you heard the case and you
19 thought a life sentence was called for, you could give life.
20 If you thought something less than life was called for, you
21 could give that. And if you thought that was the minimum
22 type of case, that you could give as little as five years?
23 Do you feel that you can do that?

24 A. Yes.

25 Q. And a lot of people say, well, it might take a

1 pretty rare case to get to five years. That's fine. You may
2 be predisposed to do something more. But you have to be open
3 to that possibility that that case could come down the line
4 some time and if you heard it, in your heart of hearts, you
5 said this is it, I thought maybe I'd never hear it, but this
6 case right here tells me that 5 years is enough and the
7 evidence tells me I can do it here. Can do you that?

8 A. Yes.

9 Q. Let's talk about Special Issue Number 1. I think
10 you've already told us that you understand the burden of
11 proof is on the State and you'll hold us to that. I would
12 like for you to consider the types of evidence that you think
13 might be helpful to you in answering Special Issue Number 1.
14 Can you think of some things that you might like to know
15 about, that might help you in deciding Special Issue Number
16 1?

17 A. Well, of course, you'd like to know has he had a
18 prior record.

19 Q. Uh-huh. Right. Okay.

20 A. That would really be the only thing I can think of
21 right now.

22 Q. Okay. The law would entitle you to do that. His
23 lack of a criminal history or the existence of a criminal
24 history, maybe whether he's been through the system before,
25 maybe whether there have been efforts to rehabilitate him

1 before. You'd be entitled to hear that. You would be
2 entitled to consider how brutal the murder itself was. You
3 get to look at all those facts and circumstances, certainly
4 in deciding Special Issue Number 1.

5 A couple of things let's go through very quickly,
6 the word "probability." The legislature gave us that word.
7 What I would like to point out to you is they're not saying
8 that the State of Texas has to prove that there is a
9 certainty that this person would commit future criminal
10 acts. We don't have that burden. It has to be more than
11 just a mere possibility or mere chance. A probability. A
12 lot of people tell me it's a greater likelihood -- it's more
13 likely than not going to happen.

14 Criminal acts of violence. Again, the legislature
15 could have required us to prove this person is going to
16 commit a future murder before you could answer the question.
17 We don't have to prove that. We have to prove commit
18 criminal acts of violence in the future. Most people tell me
19 that an offense occurring with someone else, where you put
20 someone else's life in danger or harm them in some way, as
21 opposed to going into a vacant case and taking something when
22 nobody is there.

23 Again, the word "society." The word "society" the
24 law has told us means everybody. It can mean people like you
25 and I who live in the free world. It can also mean people in

1 a prison setting. Really, anywhere that a defendant would
2 find himself can be his society. You know, we talk about
3 people here in the free world deserve to be free from violent
4 crime.

5 Do you think that people in a prison setting should
6 be free from violent crimes also?

7 A. Yes.

8 Q. Let's look at Special Issue Number 2. Again,
9 there's no burden of proof on Special Issue Number 2.
10 There's no laundry list of things that may or may not be
11 mitigating. I know in the past some people have told me that
12 things such as age or drug addiction or alcoholism, any
13 number of things may or may not be mitigating. I can tell
14 you an equal number of people say that's not mitigating to me
15 at all. It's aggravated, if anything, to me. You can see --
16 what are your feelings? Can you think of anything right
17 offhand that kind of jumps out when you hear the word
18 "mitigation" or "mitigating circumstances"?

19 A. No, not right now I couldn't.

20 Q. Okay. Let me go through a couple of things. You
21 know, some people tell us if the person is relatively young,
22 that that might make it difficult for them in some way. Do
23 you feel that way?

24 A. No.

25 Q. Or do you think age should be something you look

1 at? If it's relevant, it's relevant. If it's not, it's not?

2 A. No.

3 Q. Same thing for drugs and alcohol. Some people make
4 a distinction. Maybe I've never taken drugs, never had
5 anything to drink before. I don't know what the effects
6 would be on me. I go out and commit a crime. I'm still
7 responsible under the law. But some people might say, well,
8 he didn't don't know how it would affect him. Maybe it would
9 be mitigating.

10 Other people say, you know, if I'm a longtime user
11 and I know how that stuff affects me and I go out and commit
12 a violent offense, too bad.

13 Do you have any feelings one way or the other there?

14 A. No, just what you said.

15 Q. Let me talk about to you about sexual abuse,
16 physical abuse. You know, those claims can certainly be
17 made. Do you think that it might be possible for people to
18 lie about having been sexually abused or physically abused in
19 the past?

20 A. Yes, I do.

21 Q. Is that something you would want to know all the
22 facts about and determine whether or not it's true or not?

23 A. Yes.

24 Q. Same thing goes for mental illness. Do you think
25 there are people who might actually fake a mental illness to

1 gain advantage even in the criminal system?

2 A. Yes.

3 Q. Do you think there are people who are skillful
4 enough at lying, might even be skillful enough to fake mental
5 illness?

6 A. Yes.

7 THE COURT: 30 minutes, Mr. Davis.

8 MR. DAVIS: Thank you, Judge.

9 Q. (By Mr. Davis) Just a couple of more issues here
10 very quickly. Sometimes people tell us maybe remorse might
11 be an issue that they would want to look at, you know, is
12 somebody truly sorry and repentant for what they've done. I
13 guess you could see a situation, maybe a person commits an
14 offense, they stay at the scene, they immediately call 911,
15 they turn themselves in, they give a total confession,
16 they're crying when the first police officer arrives at the
17 scene. There may be other instances where that remorse may
18 not show up for a period of time.

19 Have you ever heard the term "jailhouse conversion,"
20 Ms. Jennings?

21 A. No.

22 Q. That would be a situation where a person finds the
23 Lord or finds God after he's housed in the county jail. Do
24 you think there might be instances where people might be a
25 bit dishonest about their conversion if they're facing a very

1 serious offense such as capital murder?

2 A. Yes.

3 Q. Is that something you'd want to hear all the facts
4 about before you make that type of judgment?

5 A. Yes.

6 Q. Ms. Jennings, I appreciate your answers this
7 afternoon, appreciate your time and patience. More than
8 anything, I appreciate your candor because, believe me,
9 that's the only way that we can intelligently try to find 12
10 persons to sit in this case.

11 THE COURT: Ms. Jennings, before we begin,
12 would you like to take a stretch break, stretch a little
13 bit?

14 VENIREPERSON: No, I'm okay.

15 THE COURT: Are you sure?

16 VENIREPERSON: Yeah.

17 THE COURT: Would like something to drink?

18 VENIREPERSON: No thank you.

19 (Recess)

20 THE COURT: Ms. King, are you ready?

21 COURT REPORTER: Yes.

22 THE COURT: Mr. Byck, will you be handling?

23 MR. BYCK: Yes, Your Honor.

24 THE COURT: The Honorable Michael Byck.

25 MR. BYCK: Thank you, Your Honor.

Cross-Examination

By Mr. Byck:

Q. Ms. Jennings, again, my name is Michael Byck and together with Ms. Balido, we represent Jedidiah Isaac Murphy in this the trial for his very life.

Now, I appreciate the seriousness in which you've answered Mr. Davis's questions and the questionnaire. I'm going to be asking you a few of the same questions, a few different questions. Again, you must understand that this is not a test of good citizenship. This is not -- there aren't any right or wrong answers. There really are not.

What I'm interested in because I'm not going to sit on this jury, I can promise you that. What I'm interested in is your heart felt feelings, because very frankly, Ms. Jennings, if you want to lie to me you probably can, you probably can do it successfully, and you can probably get on this jury, for whatever reason you might have to do that. I would hope that you would not do that. As a matter of fact, I really don't believe that you would do that, but I'm going to ask you some very difficult questions. I'm not asking them to you because I want to see you jump through hoops or over hurdles or see how far I can push you. What I do want to see is how you feel about some very, very important issues that we have in this case.

They are issues where not only does not everybody

1 have to agree on these issues, a lot of people just don't
2 agree. A lot of people feel very, very different regarding
3 the capital murder statute, regarding appropriateness of
4 punishment, regarding all kinds of things like that. And
5 very frankly, let's start with that idea. And let's start
6 not at the beginning but at the very, very end.

7 The very end is Special Issue Number 2. Whether
8 taking into consideration all of the evidence, including the
9 circumstances of the offense and the defendant's character
10 and background and the personal moral culpability of the
11 defendant. Let's talk about the phrase "personal moral
12 culpability of the defendant."

13 I'd submit to you that there may be differences in
14 moral culpability between defendants, almost -- or committing
15 exactly the same kind of offense. Let me give you an
16 example. See if you agree with me or not. If you don't,
17 say, Mike, I don't agree with that. If you do, fine.

18 Ms. Balido and I are identical twins. We were
19 separated at birth. We have exactly the same I.Q. We have
20 exactly the same talents, but Ms. Balido got to go with a
21 very nice family, very loving family that cared for her, they
22 nurtured her, they educated her, they had a lot of
23 wherewithal. They sent her to private schools. They sent
24 her to private colleges and universities. And she graduated.
25 I, on the other hand, was not so lucky. I was adopted by

1 people who were not very intelligent. They were abusive to
2 me, whether physically or psychologically or even sexually.
3 I'm as smart as Ms. Balido is. We have exactly the same
4 I.Q., but I never had a chance to live in a home where books
5 were appreciated and I never had a chance to go to private
6 schools or any schools that I got along very well in.

7 We both go and commit a bank robbery. Walk into two
8 different banks on different ends of the same block on the
9 same day and we both produce weapons. And I say, give me
10 your money or I'll kill you. I say that in my bank, and I
11 rob my bank. We each get, oddly enough, in this hypothetical
12 situation, exactly the same amount of money, \$10,000. And we
13 both exit the bank where we both are immediately arrested,
14 one by the Dallas police and one by the Dallas County
15 Sheriff's Office. Give our bailiffs equal time over here.
16 Okay?

17 We both go to trial. We're both guilty. There's no
18 doubt about that. However, a jury may feel that I should be
19 punished somewhat differently from Ms. Balido because I
20 didn't have the benefits that she had. I had more problems
21 in my life than she had. Other jurors may feel, they did the
22 same crime, they should get exactly the same punishment
23 because it was a kooky kind of deal. They said the same
24 words, had the same gun, you know, number of bullets in the
25 gun, everything else.

1 What do you feel about a situation like that?
2 Without saying whether my punishment should be higher or
3 lower, do you feel that one of our punishments might be
4 different than the others, or do you know?

5 A. I feel that it could, yes.

6 Q. Okay. That's fair enough. Depending on what
7 circumstances I could show you as to my bad upbringing and my
8 disadvantages; am I correct in saying that?

9 A. Correct.

10 Q. Okay. That's fair enough.

11 Continuing forward, backwards -- backwards, forward,
12 whichever, let's go to Question Number 1.

13 Question Number 1 says whether there's a probability
14 that the defendant would commit criminal acts of violence
15 that would constitute a continuing threat to society. First
16 of all, talk about probability. And Mr. Davis got you to
17 agree that probability would mean more likely than not.

18 Let me tell you why that is so important. While in
19 the first phase of the trial, what is called the
20 guilt/innocence phase, Judge Entz will define almost every
21 word in the charge. He will tell you what on or about
22 means. He will tell you what intentional means. He will
23 tell you what robbery means, what kidnapping means. He will
24 define all these words for you. Oddly enough in the second
25 phase, if we get to the second phase of this trial, the

1 punishment phase, hardly any words are defined for you. In
2 fact, no words are, to be perfectly honest with you. And it
3 is very important, for example, in the word probability
4 because the State has to prove beyond a reasonable doubt that
5 this word exists, this probability word exists. Well, some
6 people think that probability means more likely than not.
7 Some people think that, wait a minute, this is a capital
8 murder case here. In order for me to say that a person is
9 probably going to be a future danger, I'm going to need
10 something more than is going make it more likely than not.
11 I'm going to have to see something that I'm sure and certain
12 about, that I'm really convinced about. Which is just fine,
13 certainly fine with the defense.

14 The problem comes in when an individual says -- and
15 very frankly there is a scientific basis for saying this --
16 actually it's mathematical. It's really not scientific.
17 Where people say, well, probability means probably. If it is
18 not impossible, it's probable. Mathematicians use that, and
19 use you can see, the State has a very difficult burden of
20 proof. They readily accept that burden of proof, but what's
21 going on here in the punishment phase of the trial is a
22 calculus. It's not an addition and subtraction. It's not a
23 multiplication and division. It's a calculus, where there
24 are a lot of factors and these factors change values and they
25 change weights, depending on, A, the evidence that you hear,

1 and, B, the weight that you choose to give them.

2 For example, one juror could hear a fact and
3 consider that fact in terms of mitigation. And by the way,
4 let me make sure you know what the word mitigation means.
5 Mitigation means to alleviate or to lessen or lighten a
6 sentence. Sometimes we don't tell our jurors that. And
7 since mitigation is not a word that's often used in, you
8 know, regular discourse, I want you to be sure and understand
9 that. That's what we're talking about when we're talking
10 about mitigating evidence. Evidence would cause you to
11 lighten the load on the defendant if you found him guilty, to
12 change the punishment from death to life. Okay.

13 Getting back to the problem of probability. It is
14 very, very dangerous for a defendant to have jurors thinking
15 probability means it could happen. There's a chance. It's
16 not impossible, so it's probable. It may not be very
17 probable, but that question doesn't say strong probability,
18 weak probability, very -- not very much, whatever, it says
19 probable. And as the Judge said, there is the built-in
20 assumption that this answer should be no, unless and until
21 the State can prove it beyond a reasonable doubt. There is a
22 built-in idea in the Texas capital murder scheme that the
23 answer should be life and not death. But it is -- those
24 built-in safeguards go completely by the wayside if we don't
25 have jurors who have a strong and a sincere definition of

1 some of these words that we use.

2 Probability is one of them. I take you at your
3 word, as you told Mr. Davis, that probability would at least
4 mean to you more likely than not.

5 THE COURT: You have to answer yes or no.

6 A. Correct, yes.

7 Q. (By Mr. Byck) We talked about criminal acts of
8 violence. There's all kinds of criminal acts of violence.
9 Obviously, if I shoot my co-counsel, Ms. Balido because she
10 got a better deal than I got in my last hypothetical
11 question, then, yeah, that's a criminal act of violence.
12 Some things obviously aren't criminal acts of violence.
13 Jaywalking, you know, minor traffic violations, and things
14 like that.

15 However let me give you a short hypothetical
16 question. It is now 2:30 in the afternoon. And our voir
17 dire is going to go on for a little while. After our voir
18 dire is over, I'm going to go out to get a Coca-Cola because
19 my throat is a little dry. And I put my 75 or 80 cents or
20 whatever extortionate amount these people want in the
21 Coca-Cola machine and I don't get a Coca-Cola. Well, I don't
22 have another 80 cents, and the machine isn't making change.
23 And there isn't anybody else around. So you are going to see
24 a criminal act of violence out of me. I'm going to scream.
25 I'm going to yell. I'm going to kick that machine, and it's

1 going to be violent. I'm going to do damage to that machine
2 which will be criminal and, you know, that just may fulfill,
3 you know, all the -- all the requirements of a criminal act
4 of violence. Except, on the other hand, there isn't anybody
5 around, and I'm not hurting anybody but myself and the shine
6 on my own shoes.

7 Do you see what I mean?

8 A. Yes, I do.

9 Q. Okay. We go further. We talk about a continuing
10 threat to society. And very frankly, Ms. Jennings, I don't
11 want to sit here for the next hour and a half and talk to you
12 about continuing, which, you know, does that mean it will
13 happen every third week for the next ten years. Does it
14 matter -- does it mean it's going to happen sporadically?
15 Once every three months, and then it's not going to happen?
16 Maybe only once a year, whatever. I will trust you to give a
17 fair meaning to the word "continuing."

18 However, we run into the word "society." And Mr.
19 Davis said it perfectly when he said society is defined in
20 Special Issue Number 1 as where the defendant is. Because if
21 the -- if we're worried about -- oh, let's pick a society.
22 How about the society of rich aristocrats in Europe? Rich
23 French speaking aristocrats in Europe. They live, you know,
24 in castles and they jet set from place to place. And they
25 only drink the finest of wines. In order for me to be a

1 threat to that society, I'm going have to have some kind of
2 intrigue to that society. I'm going to have to get to Europe
3 and get a suit of clothes to get past the first line of
4 guards. And I better learn a little French. You can see
5 where if I'm not there, if I'm not around there, it would be
6 very difficult for me to get around them, then I'm not really
7 much of a threat to them, am I?

8 A. Correct.

9 Q. So as long as we talk about where the defendant is
10 in terms of a threat, because you don't impress me as a woman
11 who is going to be easily frightened, very frankly, about
12 saying society is all of us, something could happen.

13 Now, there's a couple of odd situations in that.
14 First of all, there's the -- we call it the John Gotti
15 situation. Do you know who John Gotti is?

16 A. No.

17 Q. He's the godfather in New York, a big crime boss who
18 literally could be in the cellar in the penitentiary in
19 Atlanta, Georgia, and if this guy had access to a telephone,
20 he could tap on something, that somebody else could get a
21 message to get it back to his gang to get rewarded, then Mr.
22 Gotti could very well be even in the basement of the Atlanta
23 penitentiary, a very, very dangerous person. Right?

24 A. Correct.

25 Q. But there has to be some kind of evidence to that?

1 A. Right.

2 Q. Otherwise it's mere speculation. Okay?

3 A. Uh-huh.

4 Q. All right. Let me see what else do I want to talk
5 to you about. Let's talk about your questionnaire a little
6 bit, lighten up on this a little bit. All right.

7 If -- what's the best way to put this? Which would
8 you rather be a queen or a princess?

9 A. A princess.

10 Q. If you are princess of the State of Texas, you write
11 the laws, you're not answerable to the legislature, and, oh,
12 what a lucky woman you are in that respect, would you have
13 the death penalty for the State of Texas?

14 A. Yes.

15 Q. Okay. Would you have life without parole in the
16 State of Texas?

17 A. Yes.

18 Q. Okay. You said in your questionnaire that -- well,
19 the question is, quote, if you believe in using the death
20 penalty, how strongly on a scale of 1 to 10 would you hold
21 that belief, 1 being the least of 10, the 10 being the
22 strongest. You said you believed to the extent of a 9. What
23 did you mean by that?

24 A. Well, each case -- I mean, I was looking at it as
25 each case -- if I had one ahead of me or in front of me, that

1 maybe if I did not have totally enough evidence to give the
2 death penalty.

3 Q. Uh-huh. You would of course -- this is going to
4 sound real strong. You would of course believe in the
5 verdict that you returned?

6 A. Correct.

7 Q. You would not return a verdict that you didn't
8 believe in?

9 A. Correct.

10 Q. There is no doubt about that. That's how I took you
11 to mean the number 9?

12 A. Correct, yes.

13 Q. Mr. Merit got some prison time for DWI?

14 A. Yes.

15 Q. What is your relationship with him?

16 A. He's a cousin.

17 Q. Did you go to the trial?

18 A. Oh, no.

19 Q. Do you think that individual was treated fairly by
20 the law or --

21 A. Yes.

22 Q. -- or too leniently or too harshly?

23 A. I don't know everything, but I know it was -- I
24 don't know, his third offense or something, but, yes.

25 Q. Okay. Mr. Davis asked you and I'll ask you again

1 because you are fortunate to have a mother who is still
2 alive, an elderly lady. If the facts were to show that the
3 victim of this offense was an elderly woman, that wouldn't
4 compromise your ability to be fair and impartial, would it?

5 A. No, it wouldn't.

6 Q. Okay. Okay. That's fair enough. Everybody has a
7 mother. And some of us are lucky and our mother's are still
8 alive and some of us are not and they're not alive. But we
9 are trying Jedidiah Murphy for the murder of Ms. Bertie
10 Cunningham. And, you know -- you understand what I'm talking
11 about --

12 A. Yes.

13 Q. -- in terms of that? Okay.

14 Back to Question Number 2. We talked about
15 mitigating evidence and mitigation meaning lighten or lessen
16 a punishment. There is a laundry list of mitigating
17 evidence. There's all kinds of evidence that -- well, let me
18 just read you the list instead of telling you about it then.
19 We have age; intoxication; abuse, whether mental, physical,
20 or sexual; mental illness or mental retardation; remorse;
21 family background and upbringing; cooperation with
22 authorities. There's all sorts of things.

23 Would you consider and give what weight you felt it
24 was worth to each one of these items if they were presented
25 into evidence without any preconceptions in terms of -- well,

1 I just absolutely refuse to consider this. Or, you know,
2 I -- I really think, you know, Number 3 on the list is
3 really, really important and that might override several
4 other things. In other words, what I'm asking is will you be
5 very impartial and hear the evidence and attach to it --
6 first of all, consider it, consider the evidence, and attach
7 to it what weight you think is important? Will do you that?

8 A. Yes.

9 Q. Okay.

10 MR. BYCK: Judge, what kind of time am I
11 looking at here?

12 THE COURT: Time? You have 9 minutes.

13 MR. BYCK: 10?

14 THE COURT: 9.

15 Q. (By Mr. Byck) Man, how time flies when we're having
16 fun. Okay.

17 You may hear some evidence regarding what we call
18 victim impact. Victim impact evidence is essentially where
19 the members of a victim's family would testify as to their
20 loss, essentially. It is very, very important when you
21 consider victim impact testimony to remember a couple of
22 things, number one, that testimony is only relevant and only
23 applies to the first special issue.

24 MR. DAVIS: I'm sorry. That's a misstatement
25 of the law. It does not apply to the first special issue.

1 MR. BYCK: Pardon me, I'm terribly sorry.

2 He's exactly right.

3 Q. (By Mr. Byck) It applies to the second special
4 issue. It does not apply to the first special issue, and you
5 cannot apply it to the first special issue.

6 A. Okay.

7 Q. All right. The second thing is that there is a
8 danger in victim impact testimony. And the danger being not
9 in the words that come out of the victim's mouth, but in the
10 interpretation, or actually the -- this is another part of
11 the calculus that goes on, that jurors may make of it.
12 Because we feel in America that every citizen is worth every
13 other citizen. One man, one vote. Your vote is just as good
14 as mine is. Your opinion is just as valid as mine is. And
15 very frankly, your life is worth just what mine is. We don't
16 have princesses and kings in this state, except for you for a
17 couple of minutes, but that's okay. It is very important if
18 you hear victim impact testimony that you don't get into what
19 we call doing a comparative moral worth calculation. By
20 saying that, okay, we've got an innocent victim on one hand
21 who's the president of a university and educated a whole
22 bunch of children, and attended and participated and enriched
23 all these school children's lives and gave to charity and
24 went to church regularly and all the rest of that stuff
25 versus a defendant who's, gee, he's, you know, in and out of

1 the penitentiary a couple of times, and, you know, has
2 fathered a couple of illegitimate children, may or may not
3 support them or whatever. What I'm saying here is you can't
4 make a comparative moral worth judgment. You can't say,
5 well, this person is worth five times that person's life or
6 this person should be killed eight times over for destroying
7 just another valuable human life. Do you see the danger in
8 doing that?

9 A. Yes.

10 (Reporter changes paper.)

11 Q. Okay. To be perfectly honest with you, Ms.
12 Jennings, we don't think that our court reporter's machine
13 has anything to do with what she does. She has a really good
14 memory, but she needs a couple of minutes every now and then
15 to fiddle with her machine so we let her.

16 I have just two more -- actually one more question
17 and a statement to you. You have never been on a jury
18 before; is that correct?

19 A. That's correct.

20 Q. Okay. Jurors are compilations of 12 individuals, 12
21 different people from 12 walks of life who may or may not
22 know each other. They live, each of them, in very different
23 worlds and have very different sets of life experiences.
24 Some of them very frankly -- thank you, Your Honor -- may be
25 overbearing, pushy, and just generally a real pain in the

1 neck to get along with. Well, you've run into people like
2 that in your life and, you know, we figure you're a big
3 princess and you can deal with that. The problem comes when
4 you get somebody back in that jury room who goes further than
5 that, who decides that they're right and you're wrong or
6 you're misguided and they can see straight and true and
7 clear, and all of the sudden they start intimidating you or
8 denigrating what you say, or subjecting you to high pressure
9 sales techniques or whatever has gotten them along in their
10 lives, they decided to use the same tricks on you.

11 Ms. Jennings, this whole trial is about the rights
12 that Jedidiah Murphy has. This trial is also about the
13 rights that the State of Texas has. Mr. Davis told you about
14 how he had obligations to supply certain things to the
15 defense. The defense has obligations also. We have rights.
16 The State has rights. Well, by gosh, you ought to have some
17 rights, too, as a juror and you do. You have the right to a
18 civilized and reasoned discussion and discourse on the facts
19 of this case. You have the right not to be bullied, not to
20 be pushed around, not to be insulted, and not to be dragooned
21 into something you don't want to do merely because another
22 individual or groups of individuals are just, you know --
23 they're just tougher or meaner or whatever.

24 Where I'm going with this is that if you are
25 selected to sit on our jury and if, God forbid, it does

1 happen that one of your fellow jurors does try this -- to
2 intimidate you or to dragoon you or to push you around or to
3 belittle you or there are all kinds of different techniques
4 of making people feel futile and ineffective and worthless
5 than what they really are worth. If that happens, we have
6 two bailiffs in this court. They don't work for me, believe
7 me. They work for the Dallas Sheriff's Office and Judge
8 Entz. And Judge Entz will ensure that there is decorum and
9 order in this courtroom, and he would also ensure that you as
10 a juror have an opportunity to have a civilized discourse and
11 you don't have to put up with being pushed around or
12 manipulated or talked down to or denigrated or intimidated or
13 whatever. And if that happens, will you feel -- not only to
14 yourself but if you see somebody doing it to somebody else,
15 will you notify our bailiffs who will notify Judge Entz and
16 we will put a stop to that behavior?

17 A. Yes.

18 Q. Like I say, you have rights too. And the State of
19 Texas does not want their trial decided by some authoritarian
20 ham-handed fool back in that jury box, or that juror
21 deliberation room, and we don't either. You don't deserve to
22 be treated like that. So if that arises, you won't have any
23 hesitation in letting us know about that, will you?

24 A. No, I will not.

25 Q. Ms. Jennings, the final last -- this is -- if I'm

1 ever going to throw you a life-preserver, this is the toss.
2 Ms. Jennings, is there anything that you can think of,
3 personal, social, emotional, physical, whatever, anything
4 that would cause you to be a less than fair and impartial
5 juror over the period of time that we've talked about in this
6 case? Is there any problem that I literally can sit here and
7 talk to you another 10 hours and if I didn't stumble over it,
8 I wouldn't know exactly what it was? Is there anything that
9 you want to tell the Court or the prosecution and defense
10 about your possibility, very distinct possibility of serving
11 as a juror in this case? Anything at all?

12 A. No.

13 Q. So be it.

14 MR. BYCK: Thank you, Your Honor. I conclude
15 my voir dire.

16 THE COURT: Ms. Madore, will you excuse the
17 juror, Ms. Jennings, momentarily.

18 Ms. Jennings, in your absence the attorneys will
19 notify me whether or not you will remain under consideration.
20 We're going through a process of getting up to 48 qualified
21 jurors, at the conclusion of which we have 48, the attorneys
22 will then by their peremptory challenges narrow it down to
23 12, so if you'll excuse yourself with Ms. Madore, I'll bring
24 you in within a few minutes and let you know whether you
25 remain under consideration.

1 VENIREPERSON: Thank you.

2 THE COURT: If you'll be excused with the
3 bailiff.

4 (Venireperson excused from courtroom.)

5 MR. DAVIS: The State has no challenge for
6 cause.

7 MR. BYCK: We have no challenge for cause,
8 Your Honor. Two in the pool.

9 THE COURT: Dorothy Jennings is Prospective
10 Juror Number 2.

11 MR. BYCK: Do you find we're excused?

12 THE COURT: I have no problem with you being
13 excused. I'm going to bring Debbie in and confirm a
14 telephone number and whatnot.

15 MS. BALIDO: And we need a picture.

16 THE COURT: May we have Ms. Jennings.

17 Debbie, do you want to take her questionnaire just
18 to confirm her telephone? Debbie, here is her questionnaire
19 if you just want to take her and confirm her --

20 COURT COORDINATOR: Yes, sir.

21 (Venireperson brought forward.)

22 THE COURT: Attorneys responses to the
23 Court -- the Court's determination after conferring with the
24 attorneys, you remain under consideration as a prospective
25 juror in this case. I've asked Ms. Daily to come in and just

1 confirm telephone numbers so we can get ahold of you. If you
2 should change phone numbers, work or home phone number before
3 you're notified as to the final decision, if you would please
4 let Ms. Daily know so we can keep up with you. We have one
5 other favor to ask of you if we may.

6 VENIREPERSON: Okay.

7 THE COURT: As I indicated to you, we're going
8 to be going through this process until we get 48 qualified
9 jurors of which you are -- will be one of the 48. After
10 we've gone through a number of these interviews, you can well
11 imagine it's kind of confusing to try to put faces with the
12 name on the questionnaire. May we have your permission to
13 take a Polaroid picture of you so that once the 48 have been
14 selected, we will be able to put a picture with the face. I
15 assure you that once the jury has been selected, these will
16 be totally destroyed and will not be made public for any
17 purpose whatsoever. May we have your permission to do so?

18 VENIREPERSON: Yes.

19 THE COURT: Thank you.

20 Ms. Madore will take your picture after which Ms.
21 Daily will confirm some telephone numbers after which you're
22 free to go home, back to work as the case may be.

23 VENIREPERSON: Okay.

24 THE COURT: Do not go back to the archives of
25 the Dallas Morning News and find out circumstance of the

1 case. May feel free to tell your spouse, your children, your
2 coworkers that you remain under consideration, but do not
3 allow anybody whatsoever to influence what your decision may
4 be because you may be one of the 12 jurors in this case, Ms.
5 Jennings.

6 VENIREPERSON: Yes, sir.

7 THE COURT: Any questions for me?

8 VENIREPERSON: No.

9 THE COURT: Ms. Madore, Ms. Daily, if you
10 would take care of Ms. Jennings after which you are excused.

11 (Venireperson recessed from courtroom.)

12 THE COURT: May he be excused?

13 MR. DAVIS: Yes.

14 MR. BYCK: Yes, he may.

15 (Recess for the day.)
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Reporter's Certificate

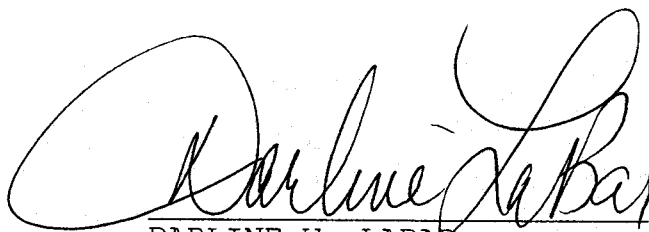
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 13th day of November, A.D., 2001.



DARLINE W. LABAR
Official Court Reporter
194th Judicial District Court
Dallas County, Texas
(214) 653-5803

Certification No. 1064 Expires December 31, 2002

REPORTER'S RECORD

VOLUME 7 of 65 VOLUMES

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT
VS. : DALLAS COUNTY, TEXAS
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

INDIVIDUAL VOIR DIRE

74145
FILED IN
COURT OF CRIMINAL APPEALS

DEC 5 2001

A P P E A R A N C E S:

Troy C. Bennett, Jr., Clerk

HONORABLE BILL HILL, Criminal District Attorney
Crowley Criminal Courts Building
Dallas, Dallas County, Texas 75207
Phone: 214-653-3600

BY: MR. GREG DAVIS, A.D.A., SBOT # 05493550
MS. MARY MILLER, A.D.A., SBOT # 21453200
FOR THE STATE OF TEXAS;

MS. JANE LITTLE, Attorney at Law, SBOT # 12424210
MR. MICHAEL BYCK, Attorney at Law, SBOT # 03549500
MS. JENNIFER BALIDO, Attorney at Law, SBOT # 10474880
Dallas County Public Defender's Office
Phone: 214-653-9400
FOR THE DEFENDANT.

On the 14th day of March, 2001, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable F. Harold Entz, Jr.,
Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by machine shorthand, computer
assisted transcription.

DARLINE W. LABAR, OFFICIAL REPORTER

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1 P R O C E E D I N G S

2 THE COURT: May we have Mr. Woodard, Sheriff.

3 (Venireperson brought into courtroom.)

4 THE COURT: Is your name Jimmy C. Woodard?

5 VENIREPERSON: Yes, uh-huh.

6 THE COURT: Good afternoon, welcome back.

7 VENIREPERSON: All right.

8 THE COURT: Ask to you raise your right hand,
9 be sworn in, please.

10 (Venireperson sworn.)

11 THE COURT: Thank you. Lower your hand. Mr.
12 Woodard, although I've previously introduced those
13 individuals whom we see seated at the counsel table, for your
14 benefit, allow me to do it again --

15 VENIREPERSON: All right.

16 THE COURT: -- if I may. Let me begin with
17 the table to the left as we look at them. The gentleman to
18 the far left at the table to the left, one of the senior
19 prosecutors in the Dallas District Attorneys Office, the
20 Honorable Greg Davis.

21 MR. DAVIS: Good afternoon.

22 VENIREPERSON: How are you doing?

23 THE COURT: Seated next to him is a fellow
24 Assistant District Attorney, matter of fact the Chief
25 Prosecutor presently assigned to this the 194th District

1 Court, the Honorable Mary Miller.

2 MS. MILLER: Good afternoon.

3 VENIREPERSON: Hi.

4 THE COURT: Moving on to the next table, we
5 have co-counsel for the defendant, beginning first with the
6 Honorable Jennifer Balido.

7 MS. BALIDO: How are you, sir?

8 VENIREPERSON: Fine, and you?

9 THE COURT: Seated next to Ms. Balido,
10 continuing down the line, is a fellow defense attorney and
11 board certified criminal law specialist, the Honorable
12 Michael Byck.

13 MR. BYCK: Good afternoon, sir.

14 THE COURT: To Mr. Byck's right as we look at
15 the table is their client, the defendant, previously
16 introduced, Mr. Jedidiah Isaac Murphy.

17 THE DEFENDANT: Good afternoon, sir.

18 VENIREPERSON: How are you doing?

19 THE COURT: Mr. Woodard, there is a third
20 attorney that is on the defense team. Her name is Jane
21 Little. She is under the weather today and is unable to be
22 with us because of sickness.

23 Mr. Woodard, we have begun the individual
24 questioning of prospective jurors a couple of days ago.
25 We're well in the process. We anticipate it will be several

1 more weeks before this process has been completed.

2 VENIREPERSON: Yes.

3 THE COURT: Before you leave us today, I will
4 notify you whether the attorneys will continue to have you
5 under consideration as a juror in this case.

6 VENIREPERSON: Okay.

7 THE COURT: Testimony is anticipated to begin
8 on Tuesday, the 29th of May, though we anticipate of course
9 having the jury sometime before then, but I like to give
10 attorneys on both sides a couple of weeks after jury
11 selection has been completed to finalize their order of
12 evidence that they anticipate presenting so the jury won't
13 be, you know, delayed by scrambling around trying to get
14 witnesses, matters such as that. Anticipate that the
15 testimony in the trial will last, oh, five to seven, maybe
16 eight days.

17 Do you know of anything in your schedule, if
18 selected by the attorneys as a juror, that would prevent your
19 returning the last Tuesday in May and completing -- staying
20 down here until you've completed a trial? I'm not suggesting
21 that you're going to be sequestered or locked up at night.
22 Hopefully go and sleep in your own bed at night. Of course,
23 do you know of any reason if you're selected that you cannot
24 return on the 29th to be a juror?

25 VENIREPERSON: No. Other than financially,

1 no.

2 THE COURT: We understand that. If that
3 becomes a problem, I assure you I'll be more than happy, as I
4 have on a number of occasions, to talk to your employer, see
5 if we can help you out. Is that fair?

6 VENIREPERSON: Yes, sir.

7 THE COURT: Okay. Mr. Woodard, let's move
8 right into the matter at hand. You are well aware of what
9 this procedure is all about. Let's kind of jump forward in
10 the interest of your time. Let us hypothetically assume that
11 you're one of the jurors. Okay?

12 VENIREPERSON: Okay.

13 THE COURT: Let's assume that you and your 11
14 jurors have heard evidence in the first stage of the trial.
15 After hearing my instructions to you which we call the
16 Court's charge, you and your other 11 jurors have completed
17 your deliberations and you have found the defendant guilty of
18 capital murder. Let's just --

19 VENIREPERSON: Okay.

20 THE COURT: -- assume that as a hypothetical.
21 Okay?

22 VENIREPERSON: All right.

23 THE COURT: You and the other 11 jurors would
24 then be called upon to determine whether or not a life
25 sentence is appropriate or a death sentence. Texas law is

1 structured in such a way that going into the punishment stage
2 of a capital murder trial, a life sentence is preferred at
3 the outset as opposed to death. And given the seriousness of
4 a death sentence, most of us in this room, if not all of us,
5 we know not of course how you may feel, but we think that's
6 the right way it should be.

7 VENIREPERSON: Uh-huh.

8 THE COURT: If as a result of a jury's
9 determination a life sentence is the result, Mr. Murphy will
10 be sentenced by me to life in the penitentiary, and he will
11 by law not be eligible for release on parole under
12 supervision, if you will, until he's served 40 calendar years
13 in the penitentiary, day-for-day, week-for-week,
14 year-for-year, until 40 years have been completed.

15 Are you with me so far?

16 VENIREPERSON: Yes, uh-huh.

17 THE COURT: Before a death sentence can be
18 imposed by me in this case, special issues -- you see over to
19 the left -- can you read them where you find yourself?

20 VENIREPERSON: Yes, uh-huh.

21 THE COURT: Why don't you read them to
22 yourself after which I'll explain the effect of them. If
23 you'd read them to yourself.

24 VENIREPERSON: Okay.

25 THE COURT: And I'll talk to you a little bit

1 about them and the attorneys will talk to you about them
2 momentarily.

3 (Venireperson given time to read.)

4 THE COURT: Have you completed that?

5 VENIREPERSON: Yes, uh-huh.

6 THE COURT: Now, the responsibility lies with
7 the District Attorneys Office representing the State of Texas
8 to convince you, if they can, that Special Issue Number 1
9 should be answered yes. If after you and your fellow jurors
10 have completed your deliberations and answer Special Issue
11 Number 1 yes, only then do you go to Special Issue Number 2.

12 VENIREPERSON: Oh, okay.

13 THE COURT: Because if you answer Special
14 Issue Number 1 no, it's a life sentence and you need not go
15 to Special Issue Number 2.

16 VENIREPERSON: Oh, okay. All right.

17 THE COURT: All right. Now, let's furthermore
18 assume that you and your other 11 jurors have decided
19 unanimously that Special Issue Number 1 should be answered,
20 based upon the evidence presented, yes.

21 VENIREPERSON: All right.

22 THE COURT: Then you go to Special Issue
23 Number 2. I call Special Issue Number 2 the -- for lack of a
24 better term, the mercy question. Special Issue Number 2
25 requires a qualified juror, and that's what we're here to

1 talk to you about. To be a qualified juror as relates to
2 Special Issue Number 2, the United States Supreme Court has
3 said that all death qualified jurors must be willing to
4 listen to mitigation evidence which is like lessening the
5 punishment or matters such as that. Be willing to listen to
6 it, in a thoughtful, considerate manner, and if as a result
7 of the mitigation evidence you think the defendant in this
8 case, Mr. Murphy, should live and not die, answer it
9 accordingly and he will live. But if you answer, you and the
10 other 11 jurors answer Special Issue Number 1 yes and Special
11 Issue Number 2 no, by law I am required to sentence Mr.
12 Murphy to death. Serious business.

13 VENIREPERSON: Okay.

14 THE COURT: Series, serious business we're at.

15 VENIREPERSON: Okay.

16 THE COURT: Do you understand the effect that
17 those answers would have --

18 VENIREPERSON: Yes.

19 THE COURT: -- if you're a juror?

20 VENIREPERSON: Yes.

21 THE COURT: Do you have any questions for me
22 before we begin the questioning by the lawyers?

23 VENIREPERSON: No.

24 THE COURT: Let me tell before we start the
25 attorneys asking the questions, there are no right or wrong

1 answers to their questions.

2 VENIREPERSON: Okay.

3 THE COURT: We don't give individuals
4 citizenship grades by virtue of their answer. We only insist
5 the oath that you've taken -- we only ask that you tell us
6 the truth.

7 VENIREPERSON: All right.

8 THE COURT: Worry not about the effects of
9 your answers as long as they're honest.

10 VENIREPERSON: Okay.

11 THE COURT: Is that fair?

12 VENIREPERSON: Yes.

13 THE COURT: Sit back, relax as much as you
14 can. Hope you haven't lost a whole lot of sleep worrying
15 about what this afternoon would be. I want to assure you
16 that you have some of the most skillful, talented lawyers in
17 the country that will be handling the questioning of you this
18 afternoon.

19 VENIREPERSON: All right.

20 THE COURT: Are you ready to begin?

21 VENIREPERSON: Yes.

22 THE COURT: We'll begin with Mr. Davis.

23 MR. DAVIS: Thank you. May it please the
24 Court.

25 THE COURT: Mr. Davis.

1 JIMMY WOODARD

2 was called as a venireperson by the Court and, after having
3 been first duly sworn, testified as follows:

4 Voir Dire Examination

5 By Mr. Davis:

6 Q. Good afternoon again. How are you?

7 A. Good.

8 Q. As the Judge told you, my name is Greg Davis. Along
9 with Mary Miller, we represent the State of Texas in this
10 case. For the next 30 minutes or so I'm going to talk with
11 you. I want to repeat what the Judge just told you. There
12 aren't any right or wrong answers. Most of the questions I
13 ask you will deal with how you feel about something, what's
14 your opinion. Believe me, I've talked to a lot of people
15 about these issues. Everybody has different opinions and
16 feelings. And as long as you tell us how you honestly feel
17 about something, that's all we as attorneys need to know.
18 Okay?

19 A. All right.

20 Q. If I ask something -- if I don't make myself clear,
21 and usually I'll do that at least, you know -- I'll do that
22 at least once in a 30-minute period. If I do that, you ask
23 me to repeat it, rephrase it. All right?

24 A. All right.

25 Q. Excuse me just a second.

1 MR. DAVIS: Judge, I think we have a matter to
2 bring up to the Court's attention. If we could approach.

3 THE COURT: You may.

4 (Side bar conference.)

5 (Mr. Woodard Excused From Consideration)

6 THE COURT: Mr. Woodard, the attorneys have
7 requested that I excuse you from further consideration.
8 Thank you. You're free to go home, back to work, whatever
9 the case may be.

10 VENIREPERSON: Thank you.

11 MR. DAVIS: Thank you, sir.

12 VENIREPERSON: All right.

13 (Juror excused.)

14 MR. DAVIS: Your Honor, may the record please
15 reflect the State and defense agreed to excuse Juror 183, as
16 well as the next juror, 303, Barbara Shehane.

17 THE COURT: The record so reflect.

18 MS. BALIDO: We're in agreement, Judge.

19 (Juror brought into courtroom.)

20 THE COURT: Is your name Kathy Lynn Hunter?
21 Ask you to raise your right hand, please.

22 (Venireperson sworn.)

23 THE COURT: Thank you. You may lower your
24 hand.

25 Ms. Hunter, welcome back. By the time that you

1 leave us within an hour or so, I will inform you whether or
2 not you remain under consideration. We're in the first week
3 of this individual questioning process, moving right along.
4 Anticipate that it will be a few more weeks before we have
5 completed the panel of 48 from which the ultimate 12 will be
6 selected. We anticipate that the testimonial stage of the
7 trial will begin on Tuesday, the 29th of May. The day before
8 is when Memorial Day is going to be officially celebrated in
9 this country so we'll begin the day after that.

10 Do you know at this stage any reason why if you are
11 selected that you could not return on the 29th to serve as a
12 juror in this case?

13 VENIREPERSON: No, sir.

14 THE COURT: Anticipate the trial will last
15 four to maybe eight days, hopefully anticipating that the
16 jury will not be sequestered, locked up at night, but of
17 course that possibility always exists if some media attention
18 obligates me to alter what I hopefully anticipate will not be
19 a sequestered jury.

20 Let me introduce the individuals whom you see at the
21 counsel tables. Let me introduce them. Previously
22 introduced them, but maybe you were at a distance that you
23 didn't get a real good look at them, a bit closer to them
24 now, and you'll be dealing with several of them very shortly.

25 Beginning with the counsel table to the left, senior

1 prosecutor in the Dallas District Attorneys Office, the
2 Honorable Greg Davis.

3 MR. DAVIS: Good afternoon.

4 THE COURT: Seated next to him is the Chief
5 Prosecutor presently assigned by Dallas District Attorney
6 Bill Hill to this the 194th District Court. This is the
7 Honorable Mary Miller.

8 VENIREPERSON: Hello.

9 THE COURT: Moving on to the defense table,
10 there are two of the three attorneys that are representing
11 Mr. Murphy in this trial. In absentia let me introduce she
12 who is absent, the Honorable Jane Little. Ms. Little became
13 rather ill yesterday afternoon, went home. Her physical
14 condition has not successfully improved to the point where
15 she is able to return. Mr. Murphy's two other attorneys,
16 though, are at the counsel table, the Honorable Jennifer
17 Balido.

18 MS. BALIDO: How are you?

19 VENIREPERSON: Fine, thank you.

20 THE COURT: And seated next to Ms. Balido is
21 another one of the defense attorneys, a board certified
22 criminal law specialist in Texas, the Honorable Michael Byck.

23 MR. BYCK: Good afternoon, ma'am.

24 THE COURT: And seated next to Mr. Byck,
25 opposite Ms. Balido is the accused, Jedidiah Isaac Murphy.

1 THE DEFENDANT: Good afternoon, ma'am.

2 VENIREPERSON: Hello.

3 THE COURT: Ms. Hunter, let's jump right into
4 the matters at hand. Of course you know the reason that
5 you're down here, to determine whether or not you'll be one
6 of the 12 jurors in a capital murder case in which the State
7 is seeking the death penalty.

8 Hypothetically let's make a couple of assumptions up
9 front, and then we'll get into the matter of the penalty
10 stage of a capital trial procedurally as it plays itself out
11 under the laws of the State of Texas. Let's hypothetically
12 assume jury selection has been completed, as a result of
13 which you are one of the 12 jurors. Furthermore you and the
14 other 11 jurors have heard all of the evidence in what we
15 call the guilt/innocence stage and you find that the
16 defendant has been guilty of murdering Bertie Cunningham
17 during the course of a robbery or kidnapping or both.
18 Hypothetically let's assume that water is over the dam.
19 Okay? In that event you and the other 11 jurors would return
20 to court with a verdict of guilty of capital murder. The
21 same 12 jurors would then be called upon to determine whether
22 or not Mr. Murphy should get a life sentence or a death
23 sentence.

24 Going into the penalty stage of a capital trial the
25 law is so structured to favor a life sentence and not a death

1 sentence. And because of the finality of death, the
2 attorneys and I involved in these matters think that's the
3 proper structure that the law should give to this serious of
4 an import. We know not obviously how you may feel about it.
5 If as a result of the jury's answering special issues in such
6 a way that it's a life sentence, by law I am required to
7 sentence Jedidiah Isaac Murphy to life in the penitentiary.
8 And an individual sentenced to life in Texas for capital
9 murder before being eligible for supervised release on parole
10 must serve 40 calendar years before being allowed, if you
11 will, to breathe free air. That 40 years, there is no
12 gimmicks or funny stuff, no good conduct time and all that,
13 40 years, day-for-day, week-for-week, month-for-month,
14 year-for-year until 40 years have been served.

15 Are you with me so far?

16 VENIREPERSON: Yes, sir.

17 THE COURT: Okay. Before the guaranteed life
18 sentence can turn into a death sentence, the jury is called
19 upon to answer up to three special issues. Based upon the
20 circumstances of this case, we anticipate that the jury will
21 be called upon only to answer two of the three statutory
22 questions. Third question as required by the United States
23 Constitution under certain circumstances which the
24 circumstances of this case do not indicate that that question
25 will be -- need to be answered by the jury.

1 We have for your benefit though the special issues
2 blown up and you see them to your left. Can you see them
3 from where you -- you're seated?

4 VENIREPERSON: Yes, sir.

5 THE COURT: Let me ask that you read them to
6 yourself and then I'm going to explain the effect of the
7 answer in regard to the sentence. Would you read them to
8 yourself, please, and then we'll discuss it a bit and the
9 attorneys a little bit more later?

10 (Venireperson given time to read issues.)

11 THE COURT: Have you done it?

12 VENIREPERSON: Yes.

13 THE COURT: Okay. Special Issue Number 1
14 begins at the outset with the answer to that question being
15 no. The responsibility of changing that from no to yes, if
16 it can be done, based on the evidence presented, lies with
17 the District Attorneys Office representing the State. We say
18 therefore that the State has the burden of proof, the
19 responsibility of going forth with evidence to prove, if they
20 can, to the jury unanimously that Special Issue Number 1
21 should be answered yes. If after deliberations the jury --
22 and they've contemplated the evidence that they've heard, not
23 only in the penalty stage of the trial, but take into
24 consideration the evidence in the guilt/innocence stage of
25 the trial, if the answer to Special Issue Number 1 remains

1 no, activate the jury call button, jury will come in, say we
2 answer Special Issue Number 1 no, it's a life sentence, trial
3 is all over. Only if the jury answers Special Issue Number 1
4 yes are they then required to go on to Special Issue Number
5 2.

6 For a number of these types of trials, a number of
7 years, I've come to call Special Issue Number 2 the mercy
8 question. The United States Supreme Court on a number of
9 occasions have said to be a constitutionally qualified juror
10 in a death penalty case, be it Texas, California, or
11 wherever, a juror to be constitutionally qualified must be
12 willing to listen and evaluate mitigating evidence, if any is
13 presented from any source, as opposed just to turning your
14 back on it and saying, well, I found the defendant guilty of
15 capital murder so it's automatic. Can't do that to be a
16 constitutionally qualified juror. You must be willing to
17 tell yourself, and thereby us, that you would be willing to
18 listen and evaluate in a conscientious manner mitigating
19 evidence. And if as a result of that mitigation evidence, as
20 a result of which you think in this case Mr. Murphy should
21 live and not die, give effect to that mitigation evidence and
22 answer Special Issue Number 2 accordingly. Because, Ms.
23 Hunter, if you answer Special Issue Number 1 yes and Special
24 Issue Number 2 no, by law I am required to sentence Mr.
25 Murphy to death. Unlike a number of states where the jury's

1 special issues are recommendations in quotes to the trial
2 judge, not so in Texas. Believing as strongly as we do in
3 the collective wisdom of the jury, we give that power to the
4 jury in Texas. Awesome responsibility.

5 VENIREPERSON: Absolutely.

6 THE COURT: Can you tell us as you sit in
7 court here today that you would be willing to listen to
8 mitigation evidence, if any is presented, and then determine
9 if as a result of it Mr. Murphy should be given a life
10 sentence and not death?

11 VENIREPERSON: Yes, I could.

12 THE COURT: Are you willing to do that?

13 VENIREPERSON: Yes, sir.

14 THE COURT: Let me go one step further with
15 regard to mitigation evidence. Unlike a number of words in
16 the Court's charge in which there's specific legal
17 definitions, there is no legal definition to guide you with
18 regard to what mitigation evidence is. Mitigation evidence
19 is whatever you say therefore it is. And let your mind be
20 expansive in considering it. An individual say, well, yeah,
21 I would if evidence was presented consider fecal (sic)
22 alcohol syndrome or crack baby or a learning disability -- I
23 mean, you can see just whatever a juror determines to be
24 mitigation evidence, is mitigating. But then have you to
25 decide does it rise to the level because of which, in this

1 case Mr. Murphy should live and not die. Follow me?

2 VENIREPERSON: Yes, sir.

3 THE COURT: Special Issue Number 1, yes,
4 Special Issue Number 2, no, equals death sentence. Any other
5 manner of responses by the jury is a life sentence, and
6 that's it. I am not a thirteenth juror. I will not overrule
7 what you and the other 11 jurors determine the answer should
8 be. Nor can any appellate court overrule what you have
9 determined to be the answers for those questions. Jurors
10 don't get reversed on appeal. Judges for some legal error
11 get reversed. Jurors are never reversed.

12 Now, I want to give you an answer to a secret. The
13 quickest way for you to get off the jury is to tell us, oh, I
14 want to be a juror in this case. We've had people almost beg
15 literally to be on a death penalty jury. Whoops, they've got
16 an agenda. We sometimes know what it is. But we appreciate
17 the fact that you have -- perhaps a bit reluctantly, but have
18 returned. The attorneys will be asking you some questions.
19 To their questions there are no right or wrong answers as
20 long as they are truthful. We don't give prospective jurors
21 grades in citizenship based on their responses so I don't
22 want you to think that we're going to think one way or
23 another about your character or citizenship by virtue of your
24 answers. Okay?

25 VENIREPERSON: Okay.

1 THE COURT: Well-intentioned honest people
2 have differences of opinion about the death penalty, about
3 abortion, about some other serious social issues that face
4 the country and members of society. We appreciate that. And
5 we hope you understand that we appreciate it as well. So
6 take a breath. You will be questioned by two of what I
7 consider to be two of the finest attorneys anywhere in the
8 country with regard to death penalty litigation. You will be
9 questioned by the best. Not suggesting they're tricky or
10 anything like that. They are as sincere as we know and hope
11 that you will be as well.

12 Are you ready to go?

13 VENIREPERSON: Yes, sir.

14 THE COURT: Begin with Mr. Davis.

15 MR. DAVIS: Thank you. May it please the
16 Court.

17 KATHY HUNTER
18 was called as a venireperson by the Court and, after having
19 been first duly sworn, testified as follows:

20 Voir Dire Examination

21 By Mr. Davis:

22 Q. Good afternoon, again, Ms. Hunter. How are you?

23 A. Fine, thank you.

24 Q. As the Judge told you, my name is Greg Davis. Along
25 with Mary Miller, I represent the State of Texas in this

1 case, and for the next 30 minutes or so I'll have a chance to
2 talk with you about what Judge Entz talked to you about.
3 We'll talk about the death penalty here in Texas. We'll talk
4 about some general principles that apply in this case. And
5 finally we'll talk a little bit about your questionnaire.
6 And as he just told you, there aren't any right or wrong
7 answers. Believe me, most of these questions deal with how
8 do you feel about something, what are your opinions on
9 something. I've done this enough, and I've talked to enough
10 people to know that everybody feels differently about these
11 things. And that's okay as long as we know how you honestly
12 feel, that's all we as attorneys expect from you. All right?

13 A. Okay.

14 Q. Ms. Hunter, let me first of all tell you what our
15 position is because it's not going to change in this case.
16 The State of Texas fully expects that we have the type of
17 evidence that will persuade a jury to find the defendant
18 guilty of capital murder. We also feel that we have the type
19 of evidence that will persuade the jury to answer Questions 1
20 and 2 yes and no which will result in a death penalty in this
21 case.

22 At the punishment phase of this trial I will stand
23 before you and I will ask you to answer those questions in
24 that way, knowing that Judge Entz will then have to impose a
25 sentence of death on Jedidiah Murphy. That's our position.

1 It's not going to change. And as the Judge has just told
2 you, if you do answer those questions yes and no, certain
3 things do begin to occur. He will be required by law to
4 impose a sentence of death on the defendant.

5 Let me just begin -- and let's go back to the
6 Central Jury Room. You remember when we had, I guess, a
7 small intimate group there, 500 or so of you. Do you
8 remember what was your first impression when the Judge
9 introduced Mr. Murphy and then told you that the State of
10 Texas was seeking the death penalty against him?

11 A. I really didn't have any opinion.

12 Q. Okay. You've had a little bit of time now to think
13 about the process, I suppose. You filled out the
14 questionnaire of course and had some time. You know, I'll be
15 honest with you. I've had a lot of people in the past who
16 have answered the questionnaire pretty much like you have,
17 said they were in favor of the death penalty, said we need
18 it, it's necessary. And yet when they come down here and
19 they're sitting in that chair that you are, it becomes a bit
20 personal. They maybe had a bit of a change of heart. You
21 know, in the abstract it's one thing to be in favor of the
22 death penalty, but as you can see, Jedidiah Murphy is not
23 abstract. He's a living, breathing human being. If the
24 State of Texas prevails in this case, there will come a day
25 in Huntsville where he will lie dead on a gurney. That's the

1 cold hard facts in this case. So let me take this
2 opportunity to ask you, Ms. Hunter, how do you feel about
3 that?

4 A. I don't have a problem with that if you can prove to
5 me beyond a reasonable doubt that he is guilty.

6 Q. Then you can find him guilty, correct?

7 A. Right.

8 Q. If the evidence persuades you or shows you that the
9 answers should be yes and no, then you can answer them that
10 way, also; is that correct?

11 A. Yes, sir.

12 Q. Fair enough. Let's talk a little bit about Special
13 Issues 1 and 2, get into that in a little bit greater detail.
14 When you look at Special Issue Number 1, I guess that you can
15 see it's asking you to some degree to look to the future?

16 A. Correct.

17 Q. Fair enough. If you could come up with say a wish
18 list of things that you would like to hear about, that you
19 think might be helpful to you in answering Question Number 1,
20 what types of things would you like to know about?

21 A. Possibly if there is any criminal -- previous
22 criminal history.

23 Q. Uh-huh.

24 A. If so, what type.

25 Q. Uh-huh.

1 A. If it's a recurring offender.

2 Q. Okay. That's fair enough. A lot of people tell us
3 that. A lot of people would say the best indicator for the
4 future is past behavior. Do they have a track record of
5 doing something like this? And the law would allow you to
6 look to the defendant's background, his character. And as
7 you said, maybe there's a history, a continuing history of
8 criminal -- criminal acts. Maybe there's an escalation
9 even. You would be entitled to know has that person been
10 through the criminal justice system before. Perhaps have
11 there been any efforts to rehabilitate that offender in the
12 past. What's been -- what has been his reaction to those
13 attempts. Has he been cooperative or has he pretty much
14 disregarded those attempts? You get to look at all of that.
15 And the law even says that another thing you can look at
16 would be the facts of the murder itself, that case where
17 you've just found him guilty. And a lot of people will tell
18 me, you know, I want to know who the victim was, why was she
19 murdered, under what circumstances was she murdered. Did
20 they know each other? Was this a long-standing relationship
21 maybe that had gone sour? Was it a bad relationship, or was
22 it a stranger on stranger sort of occurrence? A lot of
23 people have told me in the past I want to know is there some
24 sign that the murder may have been planned in some way,
25 carried out in some planned method, or does it appear to be

1 something that's very spur of the moment. All those things
2 you're entitled to consider. And again, you can look at the
3 background, you can look at the offense itself in order to
4 answer Special Issue Number 1. Does that seem fair to you?

5 A. Yes, sir.

6 Q. Okay. Let's look at some of the words there. And
7 as the Judge told you, most of these words don't have legal
8 definitions which I guess in a way is a good thing. But of
9 course you've got to define them.

10 The word "probability" is the first word I would
11 like to look at with you. And again, all these words were
12 given to us by the legislature. I guess they could have
13 chosen other words, but when you get down to probability, you
14 see they could have given us the phrase whether there is a
15 certainty. Is there a certainty this person would re-offend,
16 or is there something on the other side? Is there a mere
17 chance or a possibility that that person will re-offend?
18 They didn't do that. What they've done is come down
19 somewhere in the middle and said there is a probability they
20 are going to commit criminal acts of violence in the future.
21 A lot of people -- most people have told me the phrase
22 probability to them means that something is more likely than
23 not going to happen, there is a greater than 51 percent
24 chance that it's going to happen, if you will. Otherwise, if
25 it's less than 50 percent can you see it's a possibility at

1 that point?

2 A. (Nods head.)

3 Q. Is that definition agreeable to you? Are you going
4 to want to make it more likely than not before it's a
5 probability to you?

6 A. Yes.

7 Q. Okay. The next phrase, let's see, that would be
8 commit criminal acts of violence. And again, they could have
9 gone down on maybe extreme ends there, also. They could have
10 forced the State of Texas to prove to you that this defendant
11 would commit future murders or capital murders before you
12 could answer question Number 1 yes. They could have gone as
13 low as to say if the State shows that they would commit any
14 criminal acts whatsoever, how trivial they are, how minor
15 they are, that's enough. Jaywalking. You can think of a
16 number of things that would be trivial, but they didn't do
17 that either. What they did was make them criminal acts of
18 violence. And again, in the past a lot of people have told
19 me -- kind of the line that separates that is criminal acts
20 of violence would deal with another person, someone doing
21 something to someone else, either physically harming or
22 physically threatening them with harm in some way. That's
23 the distinction between the property crime where I go into an
24 abandoned house and steal something with somebody around.

25 How do you look at criminal acts of violence, Ms.

1 Hunter?

2 A. Definitely involve threatening bodily harm to
3 another individual.

4 Q. Okay. Fair enough. Continuing threat to society,
5 and that last word is the word I would like to talk to you
6 about for a moment. Society. When you think of who is in
7 society, who comes to mind?

8 A. Any human being.

9 Q. Is there any group you would leave out of there?

10 A. No, sir.

11 Q. That's pretty much how the law looks at society,
12 also. That could include people, you and I that live in the
13 free world. Also could be people that live in a prison.
14 Sometimes people don't include that, but it could include
15 inmates, people in prison for a criminal offense, nurses
16 guards, secretaries, visitors, anybody that happens to be
17 within a prison setting could also be a part of society. And
18 what I like to ask jurors is this: Do you think that people
19 in a prison, maybe even felony offenders, have a right to be
20 free from violent crime, also?

21 A. Yes.

22 Q. And what the law says about society is this, again,
23 that you have a right as a juror to consider everyone to be a
24 part of society. There is no need for you to exclude people
25 in a prison setting. No reason to exclude people in the free

1 world. Sometimes I've heard people say, well, you can
2 consider people in the free -- that that person would be in
3 the free world or have access to the free world. I've heard
4 that argued before. That's not the way the law looks at it.
5 The law says you have a right to consider wherever that
6 defendant might find himself, you can consider that as part
7 of society.

8 Does that seem fair to you?

9 A. Yes.

10 Q. Before we move to Special Issue Number 2, Ms.
11 Hunter, do you have any questions about what you're going to
12 be required to look at with regard to Special Issue Number 1?

13 A. No, sir.

14 Q. Let's turn and talk to -- a little bit about Special
15 Issue Number 2 then. The Judge has, I think, very correctly
16 stated that Special Issue Number 2 is kind of like a safety
17 net, if you will, because have you to remember where you are
18 before you get to Special Issue Number 2. You've already
19 found this defendant guilty of capital murder. You've
20 already decided he's a future danger. You've also answered
21 Special Issue Number 1 yes. You're really two-thirds of the
22 way to a death sentence at that time. If you answer no on
23 Special Issue Number 2, it's a death sentence. Yes is a life
24 sentence.

25 What the law asks you to do is this: Basically

1 forget what you've done before and agree to take one last
2 long look at all the evidence presented to you in the case,
3 no matter where it came from, and decide is there something
4 in that evidence that is sufficiently mitigating in my mind
5 where I think that death sentence should be changed to a life
6 sentence. That's really what the law asks you to do, and
7 it's asking you to take that question seriously. You know,
8 some people will tell me very honestly, I don't care what the
9 law requires of me, when I get to Special Issue Number 2, I'm
10 going to answer it in such a way that I make sure the guy
11 gets a death issue. I know what the law says. I'm going to
12 make sure the guy let's a life sentence and I'll answer it so
13 he gets life. The law doesn't contemplate that. They
14 contemplate you have an open mind. By that what I mean if
15 there's a mitigating circumstance that you see, if you think
16 it's sufficiently mitigating that you change it to life, you
17 do that. If you don't see something mitigating, sufficient
18 to change it to life, you change it to yes. If you have an
19 open mind when you get to Special Issue Number 2, take a look
20 at all the evidence. And if a mitigating circumstance is
21 there, fine, you give him life. If it's not there, you give
22 him death.

23 Do you think you can do that?

24 A. Yes, sir.

25 Q. Judge Entz has told you there are no -- there's no

1 lists of things that we consider to be mitigating. And the
2 reason for that is what's mitigating and what's not
3 mitigating is a very personal issue. Again, from talking to
4 people in the past I've talked about different issues and
5 some people have said to me, yeah, I would consider that
6 mitigating. I've had other people tell me just the
7 opposite. That's not mitigating. In fact, that might be
8 actually aggravating.

9 Give you an example, person's age. You can see from
10 looking at Mr. Murphy he's a relatively young man here. I've
11 had some people say to me, well, if it's a young man, I might
12 consider that to be mitigating because maybe he's got a
13 better chance to rehabilitate than an older offender. I've
14 had other people tell me when he reaches the age when he
15 knows right from wrong and he can understand the consequences
16 of his actions, that's really all I need to know. So they've
17 said that's really not an issue that I'm going to consider
18 that much.

19 Do you have any general feelings about age perhaps
20 being a mitigating circumstance?

21 A. No, sir.

22 Q. Okay. Another issue that we've talked about in the
23 past with some jurors would be the use of alcohol or drugs.
24 And I know we ask in the questionnaire about the fact that
25 it's not a defense in the State of Texas that you're

1 intoxicated when you go out and commit a criminal offense.
2 If I got drunk today or if I got high on drugs voluntarily
3 and I went out and murdered somebody, that's not a defense.

4 Now, in punishment you have the option of looking at
5 it as possible mitigation, maybe lessening my punishment if
6 you wanted to. Again, I've had some people say, well, maybe
7 I'm going to look at that as mitigating particularly if it's
8 a situation where maybe that person hasn't had that much to
9 drink in the past or hasn't used drugs, they don't know how
10 those substances affect them mentally. I've had other people
11 say that -- other people say that's a voluntary action. You
12 know, when you take the drugs, you take the alcohol
13 voluntarily. You have to take the circumstances,
14 particularly if you've used these substances in the past and
15 you know how they're going to affect your mind.

16 Do you have any general feelings about that?

17 A. No.

18 Q. It be a situation where you would simply want to
19 listen to all the facts, determine whether you think it's
20 mitigating or not.

21 A. Yes.

22 Q. Okay. Fair enough. Another -- another issue that
23 sometimes comes up in cases such as this will be a claim that
24 an individual had to be the victim of sexual abuse as a
25 child. Okay. And that claim may be presented to you as

1 possible mitigation for this type of offense. First of all,
2 Ms. Hunter, have you ever known anyone who has been the
3 victim of sexual abuse?

4 A. No, sir.

5 Q. Have you known anyone who has ever made a claim of
6 sexual abuse?

7 A. No, sir.

8 Q. Okay. Do you believe, Ms. Hunter, that it may be
9 possible that there are people who would make those claims
10 falsely to gain some benefit for themselves?

11 A. Possibly.

12 Q. Do you think there may be some people who have
13 claimed that in the past who have made false claims against
14 other individuals?

15 A. I'm sure they probably have.

16 Q. Okay. All right. Do you think as a general rule,
17 that a person may make a false claim, particularly if he's
18 facing certain criminal sanctions or stiff sentences such as
19 a life sentence or a death sentence?

20 A. Possibility, but maybe not anymore than somebody
21 just trying to gain attention.

22 Q. Okay. That may be one factor right there, just to
23 gain attention or sympathy for themselves.

24 A. Right.

25 Q. Another -- another issue that sometimes comes up

1 will be the mental health of an individual. Actually Special
2 Issue Number 2 came about because of a defendant, Johnny Paul
3 Penry, who claimed he was mentally retarded and the courts
4 said, well, in order to give juries such as yourself the
5 opportunity to consider those sorts of things, let's have
6 Special Issue Number 2. But sometimes you'll see that come
7 up. And again, with claims of mental illness, have you ever
8 known anyone who's been treated for mental illness?

9 A. No, sir.

10 Q. Do you think again that it may be possible that
11 individuals might make a claim of mental illness to either,
12 A, get attention or sympathy, or, B, to avoid responsibility
13 for their actions?

14 A. I would think that to be a possibility, yes.

15 Q. Okay. When looking at that type of claim, would you
16 like to know as much about that individual as possible to try
17 to determine whether his claim is valid or not?

18 A. Yes.

19 Q. Medical records. Do you think they would be helpful
20 to you?

21 A. Possibly, yes.

22 Q. Okay. What that individual may have said to the
23 doctors, do you think that might be pertinent to you?

24 A. Yes.

25 Q. Do you think it might be helpful to know whether

1 that person has told consistent stories to different people
2 or whether he's changing his story as he goes from person to
3 person?

4 A. Yes.

5 Q. A couple of more things on Special Issue Number 2.
6 Some people have told me that remorse may be something that
7 they would want to know about it or consider. You know, if
8 an individual, for instance -- let's say you had a
9 hypothetical case such as this and I commit a murder. And I
10 stay at the scene. I don't try to flee. I immediately call
11 the police on 911. I stay there at the scene until the
12 police get there. I fully cooperate with the police. I
13 don't try to lie to them or avoid responsibility for my
14 actions. I'm crying. I'm tearful. I'm highly emotional as
15 I talk to the police officer, and that's all immediately
16 after I've committed the offense. Sometimes people may look
17 upon that as genuine remorse or sympathy for what I've done.
18 And some people have said I might want to consider that. I
19 guess you can see there may be other situations where the
20 lack of remorse may be something that you would like to
21 consider. Maybe that person did none of those things. Maybe
22 they've shown absolutely no remorse whatsoever, until say --
23 let's say until they got caught and then all of a sudden you
24 have -- well, lack of a better term maybe the term is
25 jailhouse conversion, where they're facing a very serious

1 charge and all of a sudden they start expressing a lot of
2 sympathy.

3 Do you see there might be all different types of
4 situations that you could look at?

5 A. Yes.

6 Q. Again, when you look at that issue, would you like
7 to look at all the circumstances, when the remorse was
8 expressed and how it was expressed and whether it's valid or
9 not?

10 A. Yes.

11 Q. Finally on Special Issue Number 2, one of the things
12 that you might be asked to consider is how the individual
13 awaited in the county jail -- awaiting his trial. Sometimes
14 that may be presented as evidence maybe that he's turned his
15 life around or he's not going to be a threat in the future
16 because he's basically behaved in the county jail. Just use
17 your common sense, Ms. Hunter. How would you expect a
18 defendant to behave in a county jail when he's waiting for a
19 trial when the jury is going to be able to -- how would you
20 expect him to behave?

21 A. Good behavior.

22 Q. Again, that's something you can consider with
23 regards to Special Issue Number 1, whether there is going to
24 be a future threat. And that's also an issue that you can
25 consider on Special Issue Number 2, if you wanted to.

1 Before we leave Special Issue Number 2 then, Ms.
2 Hunter, do you have any questions about -- again, anything
3 that Judge Entz said to you or anything I've said to you or
4 what the law is going to ask you to do with regards to
5 Special Issue Number 2?

6 A. No, sir.

7 Q. Let's -- I had a couple of questions on your
8 questionnaire.

9 A. Okay.

10 Q. Change gears just a little bit. I know that we
11 asked you about your prior jury service.

12 A. Yes, sir.

13 Q. And you had indicated both a civil and a criminal
14 trial. Was that for yourself or for your spouse or --

15 A. No, I served as a juror.

16 Q. As a juror?

17 A. Uh-huh.

18 Q. Okay. In the civil case, do you remember what the
19 substance of that was?

20 A. It was some farmers suing a cotton gin company.

21 Q. All right. It sounds very interesting. Was that in
22 Dallas County?

23 A. Yes.

24 Q. Okay. We still have farmers. That's interesting.
25 I know that you reached a verdict. What was your -- what was

1 your decision in that case?

2 A. In that case -- gosh, this is way back in the 70's.
3 I believe the verdict was in favor of the cotton gin company.

4 Q. That was being sued?

5 A. Yes.

6 Q. In the criminal case can you tell us about that?

7 A. It was a murder case. An individual had been shot
8 at a service station in Oak Cliff. They ended up settling
9 out of court.

10 Q. Uh-huh.

11 A. They had --

12 Q. I'm sorry. So before you actually got the case to
13 deliberate, they reached some sort of plea bargain?

14 A. Right. We went through several days of testimony
15 before.

16 Q. What -- what was your overall impression having
17 served on that jury, even though you didn't get to
18 deliberate? What were your feelings about your service
19 there?

20 A. Basically I just felt like I was doing my job as a
21 citizen of Dallas County.

22 Q. Yeah.

23 A. Just listening to all the evidence and to come up
24 with a decision as to whether the individual was guilty or
25 not.

1 Q. Okay. All right. Any impression about how the
2 attorneys presented their evidence, anything like that that
3 stayed with you?

4 A. No.

5 Q. Okay. Well, let's -- let's turn then and talk about
6 some of the same general principles that you were told about
7 in that case because they apply in this one also. I know
8 that Judge Entz has gone through these with you, too. But in
9 this type of case I think it's better to be safe than sorry.
10 And one of the things that I'd like to highlight here is I
11 think it's very important. No matter what the results are in
12 this case, I've been through enough of these cases to know
13 that on the last day when that last verdict is returned, it's
14 very important that all us, including the jurors, be able to
15 walk out of this courtroom knowing that the right thing was
16 done, all the rules were followed, and we don't have to
17 second guess anything that we did in this case.

18 Do you think that would be important?

19 A. Very important.

20 Q. Well, let's talk about some of the protections that
21 Mr. Murphy has then for just a moment. As the Judge told
22 you, he has the right to be presumed innocent at this time.
23 That's an absolute presumption. Even though we know common
24 sense tells us he's been arrested for the offense of capital
25 murder, he's been charged with that offense, he's been

1 indicted by a Dallas County grand jury, we've begun jury
2 selection, Ms. Hunter, he's still presumed to be innocent of
3 the offense. That presumption is strong enough that if I
4 stop the proceedings right now and presented no testimony,
5 then you'd be duty bound or the Judge would be duty bound to
6 find him not guilty because that presumption alone is enough
7 to find him not guilty if I don't meet my burden of proof.

8 Can you tell all of us and assure us that you will
9 give Mr. Murphy that presumption of innocence?

10 A. Yes.

11 Q. Secondly, as I told you, the burden of proof is on
12 the State of Texas. I've got to prove his guilty beyond a
13 reasonable doubt.

14 Now, some jurors have told me maybe that's okay in
15 another kind of case where you're not talking about a man's
16 life, but when it comes to capital murder, I want something
17 more. You're going to have to prove that case beyond a
18 shadow of a doubt or beyond all doubt. Well, that's fine to
19 feel that way, but the law requires me to prove it beyond a
20 reasonable doubt. And I guess you can see why. Because in
21 order to get to that other higher 100 percent standard, you'd
22 probably need to be a witness to the offense yourself.

23 Can you see how that would apply?

24 A. Yes.

25 Q. Okay. Can you assure Mr. Murphy and his attorneys

1 and myself that in this case that you will make me prove my
2 case beyond a reasonable doubt before you find this man
3 guilty?

4 A. Yes, I will.

5 Q. You know, these types of cases, can we prove through
6 any -- any types of evidence, Ms. Hunter, could be direct
7 testimony, eyewitnesses. A lot of these cases don't have
8 eyewitnesses though. And those cases the State has to rely
9 upon circumstantial evidence. That can take many different
10 forms. It can be blood evidence. It can be DNA evidence.
11 It can be fingerprint evidence.

12 In general, how do you feel about the reliability of
13 DNA evidence and fingerprint evidence?

14 A. I don't have any problem -- I mean, I feel that they
15 are probably 99 percent accurate.

16 Q. Okay. In general do you feel like if the State
17 presents a case that's strong enough, based on circumstantial
18 evidence alone, that you can find the defendant guilty, again
19 if the evidence persuaded you that he was guilty?

20 A. Yes.

21 Q. Let me -- let me ask you -- have you ever known an
22 individual who has used illegal drugs?

23 A. No.

24 Q. Okay. Do you have any -- any knowledge or
25 understanding about what effects the drugs -- marijuana,

1 cocaine, or LSD would have on the human mind?

2 A. Other than just what I've read or heard.

3 Q. Uh-huh.

4 A. Nothing other than that.

5 Q. Okay. Have you heard about any cases in the press
6 maybe recently where you thought, you know, depending on what
7 I heard in that case, that might be the kind of case where
8 the death penalty might be appropriate?

9 A. No.

10 Q. How about this case that recently occurred -- they
11 call it the Texas 7, the inmates who broke out of prison and
12 killed a police officer in Irving. Have you been following
13 that?

14 A. Not real close.

15 Q. Right. Those were individuals who were serving very
16 long prison sentences -- in fact, some of them were serving
17 life sentences. They escaped, committed a robbery in
18 Houston, came to Arlington and killed a police officer and
19 escaped to Colorado. One area very briefly before I -- in my
20 comments with you, it will be one of your duties as a juror
21 to judge the credibility of witnesses. You may have any kind
22 of numbers of witnesses. It may be police officers. I like
23 to tell people my dad was an electrical contractor, and I see
24 your dad is, too. Some people don't like electricians. Some
25 people say if it's a plumber, I'll believe them, but

1 electricians, huh-uh. What I would like to ask you to do is
2 listen -- to hear that person before you decide whether you
3 can believe them or not.

4 Do you believe you can keep an open mind and do
5 that?

6 A. Yes.

7 Q. With regards to a defendant testifying, no one can
8 force a defendant to testify against himself. He has the
9 right to remain silent. But if he does testify, the law says
10 he has no presumption of being a truth teller. You're to
11 judge him like you would any other witness.

12 Do you think you can do that, also?

13 A. Yes.

14 Q. And with regards to him not testifying, the law says
15 you can't hold that fact against him, can't consider it for
16 any reason, because as you can understand, there may be a
17 number of reasons they don't testify. Maybe they don't speak
18 English. Maybe they stutter, speak poorly in public. It
19 could be as simple as they know they're guilty, they don't
20 want to get caught in a lie. And another one is the State
21 says if a defendant has prior felony convictions, those can
22 be brought out when he's testifying and the jury can use that
23 to consider his credibility. There are a number of reasons.
24 What we need to know is can you follow the law as given to
25 you by Judge Entz and can you go back to that jury room if he

1 doesn't testify and basically forget about that and look at
2 all the other evidence in determining whether or not we've
3 proven our case beyond a reasonable doubt?

4 A. Yes.

5 Q. Ms. Hunter, I think that we've covered everything
6 that I needed to talk to you about. Is there anything that
7 I've covered that I maybe have muddied the waters on a little
8 bit or maybe it's raised a question in your mind that we need
9 to talk about?

10 A. No, sir.

11 Q. I appreciate your time, and more importantly on
12 behalf of all of us, I appreciate your candor because that's
13 really what we do depend upon to get 12 fair and impartial
14 jurors.

15 THE COURT: Ms. Hunter, before we begin the
16 defense questioning, would you like to take a little break,
17 stretch your legs, rest room break?

18 VENIREPERSON: I'm fine.

19 THE COURT: Do you need a glass of water?

20 VENIREPERSON: No, I'm fine.

21 THE COURT: Ready to continue.

22 Cross-Examination

23 By Mr. Byck:

24 Q. Ms. Hunter, again, I'm Mike Byck. Along with my
25 co-counsel Ms. Balido and the absent Ms. Little, we represent

1 Mr. Murphy in this trial for his very life. I appreciate the
2 seriousness and candor that you answered Mr. Davis's
3 questions. I imagine you'll do the same for me. I'm going
4 ask you a couple of the same questions, a couple of very
5 different questions, and some very different attitudes. And
6 again, there are no right or wrong answers here. We all know
7 that because it's all your opinion. This is not a legal
8 exam. You are not being graded for correctness or accuracy
9 or even neatness or originality for that matter. But on the
10 other hand, your answers are very, very important to us. I'm
11 not going to be on this jury. I promise you that. You just
12 very well may. So we want to hear what you have to say about
13 some of these issues.

14 First of all, and I think how we deal this, we'll go
15 backwards, forward -- instead of forward, backwards. I'll
16 show you what I mean in a second. Question Number 2, or
17 Special Issue Number 2, is as Judge Entz says the -- the
18 mercy question, the fail safe question, the question where
19 jurors who essentially are called upon by our law, by the
20 United States Supreme Court to give a reasoned moral
21 response. Informing that reasoned moral response, jurors can
22 use a lot of different kinds of information. For example,
23 and it's listed in Special Issue Number 2, the circumstances
24 of the offense. Whether it was planned, whether it was spur
25 of the moment, whether it was inflicted with needless cruelty

1 and torture, or whether it was not done that way.

2 The defendant's character and background. Character
3 is what other people essentially think about you. It's a
4 shorthand description of your everyday behavior. Background,
5 as you can well imagine, his school records, medical records,
6 psychological-psychiatric records, if any, things like that.

7 Then we come to a -- kind of an odd phrase. Now,
8 remember, none of the words in the second stage of this
9 trial, the punishment stage, are defined for you. That's
10 very strange because in Texas law Judge Entz will define
11 every term in the guilt or innocence phase. He will tell you
12 what on or about means. He will tell you what in the course
13 of committing means. He will define for you the word
14 intentionally. He'll tell what you manner and means mean.
15 All those things are done by the Court so there won't be any
16 doubt or dispute amongst the jurors.

17 However, when we get to the punishment stage, Texas
18 law does not do that. Mr. Davis has already talked to you
19 about probability and special issues in Special Issue Number
20 1. What I want to talk about is this concept of personal
21 moral culpability. Some people don't believe in personal
22 moral culpability. And let me explain to you what that
23 means. I know it doesn't appear this way, but Ms. Balido and
24 I are really identical twins. We were born of the same
25 parents. And as soon as we were born, we were both adopted

1 out. Ms. Balido got adopted by some wonderful people who
2 live in Highland Park who are very well educated and they
3 nurture her. They -- you know, they would spend nights with
4 her sitting in their lap, reading books together. And they
5 would go do family things together. And, you know, they were
6 just wonderful to her. They sent her to good schools. They
7 made sure she got her teeth straightened and got glasses if
8 she needed it. And she finally went on to college and
9 finally graduated from law school. I, on the other hand, was
10 not so lucky. While we are identical twins, I was treated
11 very differently. I was adopted by a family that was
12 dysfunctional to say the least. I was abused, perhaps
13 sexually, certainly psychologically and verbally. Sometimes
14 I didn't get the proper medical care that I needed. That's
15 why I have to wear glasses and she doesn't. I didn't get to
16 go to very good schools. As a matter of fact, even though we
17 are about of the same general I.Q., I had to drop out of high
18 school because my dysfunctional family got themselves in a
19 bunch of trouble with the law and I had to go out on my own.
20 Okay. From that point X number of years later in our
21 hypothetical question both Ms. Balido and I show up on the
22 opposite corners of a street in downtown Dallas where there
23 are two banks. They are regular banks. They're not Federal
24 Reserve banks because even though I wasn't well educated, I'm
25 not stupid enough to think that I can rob a Federal Reserve

1 bank with anything short of a semi truck and front loader.
2 I'm not smart enough to drive a semi truck or work a front
3 loader. We rob a couple of banks. You don't have any --
4 you're in the Federal Reserve, right? Anyway we both go into
5 the bank armed with the same gun -- two different guns, but
6 the same caliber, the same type. We both say the exact same
7 things to the bank teller, which is give me your money or
8 I'll kill you. We both get about the same amount of money,
9 oddly enough, turn around, walk out the door where we both
10 run into several very different members of the Dallas Police
11 Department who disarm us, put us under arrest, and take us
12 down to the police station.

13 Now, we are both indubitably guilty of bank
14 robbery. There is no doubt about that. But can you see
15 where Ms. Balido's sentence and my sentence perhaps ought not
16 be the same? All other things being equal. We might ought
17 to get different sentences, due to our backgrounds or due to
18 some things that were beyond our control. Or do you feel,
19 no, you both did the same crime, you both ought to get the
20 same time. How do you feel about that?

21 A. I would have to hear the evidence.

22 Q. Okay. And that is fair enough. That is fair
23 enough. But can you see in my hypothetical question that
24 perhaps -- just perhaps one of us ought to get a different
25 sentence than the other?

1 A. Depending on what the evidence was.

2 Q. Right, of course. Of course. Okay. At least you
3 believe in the concept, and that's what I'm talking about, is
4 that you do recognize and understand that concept of personal
5 moral culpability.

6 A. Yes, I understand.

7 Q. Okay. Because that essentially is what Question
8 Number 2 really is all about. Question Number 2 is saying,
9 yes, I found the individual guilty of capital murder. Yes, I
10 believe this individual is going to commit criminal acts of
11 violence that's going to constitute a continuing threat to
12 society. However, if I hear evidence that I feel rises to a
13 level where a life sentence should be imposed for whatever
14 reason, and believe me, there could be all kinds of reasons.
15 I was talking to a juror once who said, well, yeah, if I
16 believe that, you know, the individual was guilty of the
17 capital murder, was going to be a terrible threat to society,
18 but what if this individual was like Michael Angelo or
19 something, that he was an absolute artistic genius, someone
20 through the strength and power of their training could really
21 transform people, then, you know, I might consider answering
22 the Special Issue Number 2 where an individual might get life
23 instead of death. That's kind of an extreme example of a
24 mitigating factor that we call our testability. It's about
25 as rare as the occurrences of Michael Angelo in our society,

1 but nevertheless it could happen.

2 All kinds of things can be mitigating. The things
3 that Mr. Davis talked about. Remember age, he talked about
4 intoxication, he talked about, you know, abuse as a child, an
5 individual's mental health, remorse, jailhouse behavior.
6 That's part of the laundry list. You can also talk about
7 mental illness, family love or lack of it, cooperation with
8 the authorities. I believe he talked about that and jail
9 behavior. The list can go on. It's what you consider
10 mitigating. That's what's important. And if once you
11 consider it mitigating, is it important enough for you to say
12 I think this person ought to live instead of die.

13 What I'm asking you is if you see that kind of
14 evidence, will you give voice to it in your deliberations and
15 will you share your feelings about that evidence with the
16 other members of the jury panel?

17 A. Yes, I will.

18 Q. Okay. Now, Ms. Hunter, let's go all the way back to
19 the beginning. You understand what capital murder is. It's
20 murder plus. There is murder in the course of committing
21 another offense, rape, robbery, or kidnapping, or murder of a
22 special person, a child, policeman, fireman, something like
23 that. Okay?

24 Murder, capital murder, and we are talking about is
25 a very peculiar kind of an offense because there are several

1 ways to commit murder. I could pull out a gun and I can
2 shoot my co-counsel. That's murder. It's not capital
3 murder. I could pull out a gun and shoot my co-counsel six
4 or eight times and jump up and down on her dead body. That
5 is still just murder, even though it's a little uglier than
6 the first one. It's still nevertheless murder.

7 One of the things that murder and capital murder
8 have in common, although it is exclusively capital murder, is
9 the requirement that the crime be intentional. Capital
10 murder -- while all murders are either knowing or
11 intentional, capital murders have to be specifically intended
12 to cause the result. Let me give you an example. I -- you
13 know, I still harbor a grudge because my nonidentical twin
14 over here got a better deal than I did in life, so I bring my
15 gun to court. I went out and bought that gun. Then I went
16 out and bought some bullets that fit it. Then I deliberately
17 loaded that gun, tucked it in my pocket, and somehow managed
18 to sneak it by our security guards. That probably wasn't
19 very difficult. Be that as it may. I bring my gun up here,
20 and I have just absolutely had it with her, you know,
21 discussions of her fancy law school education. So I pull out
22 my gun and she sees it. I aim it at her and she sees that
23 and I fire the gun. Ms. Hunter, I don't mean to frighten her
24 by seeing the gun. I don't mean to threaten her by pointing
25 it at her. I don't mean to wound her by shooting her. I

1 want her dead. And I kill her, and she dies. That's my
2 intent. When it is my conscience objective and desire to
3 both engage in the conduct, bang, and cause the result. Ms.
4 Balido falls over dead. That's specific intent. That's the
5 intent. The mental state, if you will, that is necessary for
6 a capital murder. Okay?

7 A. Okay.

8 Q. Okay. There are other ways of committing murders.
9 You know, Ms. Balido could be walking down the street with a
10 bunch of her snotty law school educated friends, and I can
11 drive by and shoot at them, bang, bang, bang, and maybe I was
12 aiming for Ms. Balido. And maybe I hit somebody else. That
13 could still be murder. It's not specific intent because I
14 didn't even know the other person, but it was -- I was doing
15 an act clearly dangerous to human life. There is easily a
16 consequence or result. But that's a murder, but it would not
17 be a capital murder, unless I killed more than one person.

18 That mental intent is going to be very, very
19 important in this case. And what I wanted to do is ask you
20 if you in your deliberations, pursuant to the Judge's
21 instructions, because believe me, the Judge will tell you all
22 about this, if you will keep at the forefront of your
23 deliberations this very, very strong requirement for specific
24 intent.

25 Will do you that, if you are so instructed by the

1 Judge?

2 A. Yes, sir.

3 Q. Okay. Do you have any questions for me?

4 A. No, sir.

5 Q. Okay. Let me go over your questionnaire real quick.

6 Ms. Hunter, we do not tell you very much about this offense.

7 If you'll notice, Mr. Davis didn't say, well, it happened at
8 such a such a person and such a time and place and give you
9 some companies where you might remember. I am allowed to ask
10 you one question, and that is if the evidence were to show
11 that the victim in this case was an 80-year-old woman, would
12 you still be able to be a fair and impartial juror?

13 A. Yes.

14 Q. Okay. The reason why we ask that is because, you
15 know, sometimes we have capital murder involving children or
16 police officers or nuns or something like that where an
17 individual will say, listen, you want to try a murder case
18 with a liquor store owner or truck driver or whatever, that's
19 fine with me, but don't talk to me about killing children. I
20 will suddenly cease to be fair. You don't feel that way?

21 A. No.

22 Q. Okay. I want to go over just a few more things.
23 I'll warn you right now, Ms. Hunter, you're a real good
24 candidate to being the third juror in the jury pool in this
25 case. So while you're sitting up there saying, you know,

1 gee, it's fun to be well liked, but I don't want to be on
2 this deal. If anything comes to your mind you need to tell
3 us about -- literally I could sit here all week long and ask
4 you questions, and if I asked you all day long, the question
5 wouldn't come up, but if there is something in your mind of a
6 social, personal, financial, health, whatever it is, that
7 might interfere with your being a fair and impartial juror in
8 this case, please let us know. I'll give you plenty of
9 opportunities for that. Okay?

10 A. (Nods head.)

11 Q. Now that you're warned, let me tell you a little bit
12 about -- the offense of capital murder states about seven or
13 eight elements. The elements that we call them, we being
14 lawyer, in capital murder are, on or about a date certain, in
15 Dallas County, a named individual was killed, that is, was a
16 human being, they were born alive. They were killed by a
17 specific manner and in a certain means -- manner and means
18 stabbing with knife, driving over them with a truck, beating
19 them to death with a baseball bat, something like that.
20 Okay? And that a named individual did it in the course of
21 committing whatever the offenses are that are alleged. Each
22 one of those things are known as elements to the offense.
23 Each one of them must be proved. They must be proved by the
24 State. They must be proved beyond a reasonable doubt.

25 I take it from your answers that if the State failed

1 to prove -- if we had an indictment that said so-and-so was
2 charged with capital murder by stabbing them with a knife and
3 the State of Texas proved to you beyond a reasonable doubt
4 that the individual ran over them with a truck and then
5 backed over them again a couple of times, but there was no
6 knife involved, there was no stabbing involved, that you
7 would not be able to find the individual guilty of capital
8 murder. You would have to say, you said stabbing with a
9 knife, you proved running down with a truck. I cannot find
10 you guilty because you have not proved that element beyond a
11 reasonable doubt. Right?

12 A. Right.

13 Q. Okay. We run into another problem, and that problem
14 is with confessions. It's entirely possible that a
15 confession may be sought to be introduced in this case.
16 Confessions -- and I'm talking about a written document --
17 come with some very particular rules involved with them. The
18 rules are as you have probably heard if you're any kind of
19 fan of L.A. Law or police shows or anything. Remember when
20 they arrest somebody, they say put your hands behind your
21 back and they give them their Miranda warnings. They're
22 Miranda warning is, quote, you have the right to remain
23 silent. Anything you say can be used against you. You have
24 the right to have an attorney be with you during your
25 questioning. And if you're too poor to a hire an attorney,

1 we'll appoint one for you. And you have the right to
2 terminate this interview at any time. Generally that's the
3 four warnings that the individual is warned before a written
4 statement can be taken. Okay?

5 A. Okay.

6 Q. Very technical rules. If we were to have a
7 situation where a confession was sought to be introduced and
8 you and your fellow jurors made some findings about this
9 confession, you found, number one, that it was not a coerced
10 confession, that is nobody took the defendant in and beat him
11 with a baseball bat until he signed the document, no physical
12 violence, nobody sat on his chest and hit him until he
13 confessed because that's coerced confessions. And uncoerced
14 confessions are very different. I don't know how many
15 warnings you give in a coerced confession. If you use
16 physical violence on somebody, we're not talking about that.
17 We're talking about where an individual is questioned by the
18 police and the police say, okay, I think I remember those
19 warnings and they go you have the right to remain silent, got
20 the right to have an attorney, and if you're too poor, we'll
21 give you an attorney. And they don't remember the fourth
22 one. And the fourth one, you have the right to terminate the
23 interview at any time, and the officer when he testifies in
24 front of the jury says, yeah, I gave him three out of the
25 four, but I don't remember giving him the fourth. And if I

1 don't remember, I probably didn't, but I really don't know.
2 But he never asked to stop the interview anyway. And this
3 confession -- I mean, it's literally the only evidence of the
4 individual's guilt. Otherwise, there is nothing to connect
5 that individual with the offense. If you were presented with
6 a situation like that, where the Judge were to instruct you
7 you've got to find all four warnings that are given, you
8 found three of the four were given, you find the fourth was
9 not proved to you beyond a reasonable doubt, but on the other
10 hand, didn't appear to be important anyway, since the person
11 never asked to stop the interview, would you be able to say,
12 well, according to the Court's instructions I'm just going to
13 have to not consider this confession. And if I can't
14 consider the confession, then there isn't any evidence
15 against this person. And if there isn't any evidence against
16 this person, except the confession that, you know, I believe
17 it's true, I know it wasn't forced, but on the other hand, I
18 know just as well it doesn't comport to the law that the
19 Judge gave me. That said, all four warnings have to be
20 given. I'm just not going to consider that confession and
21 I'm going to turn the person loose. Obviously, that's not
22 going to be an easy thing to do. But if that's the way the
23 cards -- the chips fall -- if that's the way the chips fell,
24 would you be able to do that?

25 A. If that was the instructions of the yes, Judge.

1 Q. Okay. All right. Ms. Hunter, last chance, anything
2 you can think of, anything at all? I can give you the list,
3 personal, financial, social, maybe have something to do with
4 somebody that was never mentioned in this questionnaire.
5 Have you a -- you know, a sick brother someplace or
6 something, whatever it was, anything that is going to
7 distract you from the last day of May and through the five to
8 eight days -- trial days of this case? Anything that is
9 going to distract you take your mind away from what you're
10 doing?

11 A. No, sir.

12 Q. Okay. Any reason at all you want to give for
13 getting out of this, because literally the boat is leaving
14 the dock, ma'am?

15 A. No.

16 Q. Okay. Thank you, Ms. Hunter. I appreciate it.
17 Thank you.

18 MR. BYCK: Your Honor, that concludes my voir
19 dire.

20 THE COURT: Ms. Madore, will you excuse Ms.
21 Hunter momentarily.

22 Ms. Hunter, the attorneys will confer with their
23 respective co-counsels. Then we'll determine if you remain
24 under consideration. You may be excused for a moment.

25 (Venireperson excused from courtroom.)

1 (State no challenge for cause - Ms. Hunter)

2 MR. DAVIS: Your Honor, the State has no
3 challenges for cause.

4 (Defense no challenge for cause - Ms. Hunter)

5 MS. BALIDO: The defense has no challenges for
6 cause.

7 (Recess taken.)

8 (Kathy Hunter Prospective Juror No. 3)

9 THE COURT: Ms. Hunter, the attorneys have
10 authorized me to inform you that you do remain under
11 consideration as one of the jurors in this case.

12 VENIREPERSON: Okay.

13 THE COURT: With your permission, I'm going to
14 ask that you allow the bailiff to take a Polaroid picture of
15 you, and let me tell you why. We talk to an awful lot of
16 people, at the conclusion of which it gets a little bit
17 blurry about, well, was this person, I remember the
18 questionnaire, but it sure would help if I had a picture of
19 this individual to place with the information. With your
20 permission, I'm going to ask that you allow the bailiff, Mr.
21 Rees, to take a Polaroid picture of you for the limited
22 purpose of when we've gotten down to this 48-person pool,
23 they will look at the picture and then again match it up with
24 the information and the questionnaires, plus the notes that
25 they've taken today after which I promise you, they will be

1 destroyed.

2 VENIREPERSON: Okay.

3 THE COURT: May we have your permission to
4 take your picture for that limited --

5 VENIREPERSON: Yes, sir.

6 THE COURT: Ms. Hunter, we have a home number,
7 work number, and given the circumstances of your employment
8 and whatnot, we don't anticipate a likelihood of you leaving
9 or changing, but if you should change telephone numbers,
10 would you notify the court so we can keep you abreast of this
11 jury selection process?

12 VENIREPERSON: Yes, sir, I will.

13 THE COURT: Any questions for me?

14 VENIREPERSON: No, sir.

15 THE COURT: You see the indictment right
16 before you. Please do not get in touch with the Dallas
17 Morning News archives and go back and get a copy of the paper
18 about that date. Any decision you make as a juror must be
19 based only on evidence that you hear in the courtroom. If
20 you're one of the jurors and you recall, oh, I remember
21 hearing about this, this, and this, that's fine, as long as
22 you will disregard that which you have read or seen or heard
23 in print or electronic media and decide the case based upon
24 the evidence presented in the courtroom alone.

25 Is that fair?

1 VENIREPERSON: Yes, sir.

2 THE COURT: Feel free to tell obviously your
3 spouse and other folks at the Federal Reserve that you remain
4 under consideration, but if you're a juror only what you hear
5 in the evidence in the courtroom as opposed to any extraneous
6 outside influence may be taken into consideration by you in
7 determining a verdict in the case.

8 VENIREPERSON: All right.

9 THE COURT: Is that fair?

10 VENIREPERSON: Yes, sir.

11 THE COURT: All right. Free to go home, back
12 to work as the case may be.

13 Any word about what the chairman may do with regard
14 to the interest rates, or you can't talk?

15 VENIREPERSON: No, I don't know. I don't keep
16 up with it I'll be quite honest. Just do whatever he says.

17 THE COURT: As we all do.

18 (Juror recessed.)

19 THE COURT: Tomorrow, 1 o'clock?

20 MR. BYCK: Tomorrow, 1 o'clock.

21 (Recess of proceedings.)

22

23

24

25

Reporter's Certificate

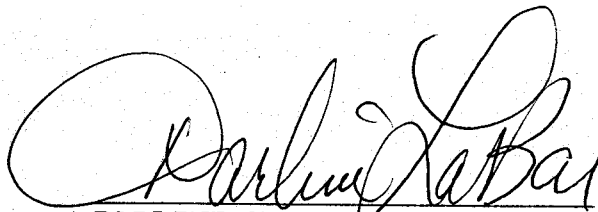
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the November 13th, 2001 A.D., 2001.



DARLINE W. LABAR
Official Court Reporter
194th Judicial District Court
Dallas County, Texas
(214) 653-5803

Certification No. 1064 Expires December 31, 2002

74145

REPORTER'S RECORD

VOLUME 8 of 65 VOLUMES

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT
VS. : DALLAS COUNTY, TEXAS
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

INDIVIDUAL VOIR DIRE

FILED IN
COURT OF CRIMINAL APPEALS

DEC 5 2001

Troy C. Bennett, Jr., Clerk

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FOR THE STATE OF TEXAS;

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MR. MICHAEL BYCK, Attorney at Law, SBOT # 03549500
MS. JENNIFER BALIDO, Attorney at Law, SBOT # 10474880
Dallas County Public Defender's Office
Phone: 214-653-9400
FOR THE DEFENDANT.

On the 15th day of March, 2001, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable F. Harold Entz, Jr.,
Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by machine shorthand, computer
assisted transcription.

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NO EXHIBITS THIS VOLUME

1 P R O C E E D I N G S

2 THE COURT: Sheriff, may we have the jurors,
3 please. Ladies, may I ask each of you to raise your right
4 hand before you have a seat.

5 (Venirepersons sworn.)

6 THE COURT: Thank you. Please lower your
7 hands, ladies, and be seated.

8 Ladies, good afternoon. Before we begin with the
9 individual questioning, it's been my practice over a number
10 of years to set the stage, if I may, hopefully to put you a
11 bit at ease, if I may, realizing from past experience that
12 individuals come down here having previously been notified
13 that they remain under consideration as a prospective juror
14 in a capital case in which the State is seeking death that
15 there is a little bit of normal trepidation, I guess, that
16 accompanies that status in any normal human being. I want to
17 try to put you at ease as much as I can and let you know that
18 before you leave us this afternoon, you will be told whether
19 or not the attorneys and I will continue to keep you under
20 consideration as a prospective juror in this case. Because
21 what we are doing is working our way towards a pool of
22 qualified jurors, that number 48, after which the attorneys
23 will be allotted their statutory right to 15 peremptory
24 challenges per side, plus an additional one or two as I deem
25 necessary under the circumstances. At the conclusion of that

1 process the 12 ultimate individuals jurors that will be in
2 this case will be identified. So we will let you know before
3 you leave us today whether you are in that pool ultimately of
4 the 48.

5 We'll probably be involved in this process for the
6 next several weeks. Been my practice also over a number of
7 years to give the attorneys on both sides, after the jury has
8 been selected, in the interest of the jurors' time, a week or
9 so to get their final trial preparation in order where so
10 that there's not a delay in presentation of witnesses and
11 evidence that would delay the jury once those 12 individuals
12 have been selected. Therefore, we anticipate beginning the
13 testimonial stage of this trial Tuesday, the 29th of May.
14 It's the day after Memorial Day is celebrated.

15 Do any of you have any insurmountable scheduling
16 problems that you know of right now that would prevent your
17 returning back the last week in May for anywhere from four to
18 seven days? Not anticipating, knock on wood, that you'll be
19 sequestered. I don't see an abundance of media attention
20 yet, but of course by law I must always keep that possibility
21 open. But at this stage, with the cooperation of the print
22 and electronic media, I'm hoping that the jury will not be
23 sequestered. So you'll be able to put your head on your own
24 pillow at night and sleep in your own bed.

25 Do any of you have a problem at the outset? None?

1 Let's jump right into the matters at hand. Let's
2 assume a few hypothetical matters, if we may. Let's assume
3 jury selection has been completed. You are 3 of the 12
4 jurors in this case. The guilt/innocence stage of the trial
5 has been completed at the conclusion of which you find beyond
6 a reasonable doubt the guaranteed presumption of innocence
7 has been overcome. Each of the allegations in the indictment
8 have been satisfied to your satisfaction beyond a reasonable
9 doubt, as a result of which it may be one of you, the
10 presiding juror affixes her name on the verdict form. We,
11 the jury, find the defendant, Jedidiah Isaac Murphy, guilty
12 of capital murder as charged in the indictment. Return to
13 court. That decision will be memorialized by me to be the
14 verdict. I will poll the jury individually and each member
15 of the jury affirms that that is their individual verdict as
16 evidenced by the presiding juror on the verdict form.

17 That same jury will then convene in the penalty
18 stage of the trial. Under current Texas law an individual
19 found guilty by a jury of capital murder in the penalty stage
20 there are but two options. Unlike other offenses which --
21 excuse me, there's a vast penalty range, and many offenses,
22 not so in a capital murder case. It's either/or. Either
23 life in the penitentiary, or death by lethal injection.

24 In my opinion, quite properly, the legislature has
25 fashioned the procedure in a penalty case with regard to a

1 capital case wherein going into the penalty stage of a
2 capital case, the law prefers or is biased toward, if you
3 will, a life and not a death sentence. And I would hope that
4 each of the three of you, given the ultimate of the
5 punishment of death, would agree that the legislature has
6 fashioned it properly such that death is not an easy burden
7 or a prosecution to prove or for a jury ultimately to render.

8 Before a death sentence can be pronounced by the
9 trial judge, under Texas law, the jury is called upon to
10 answer certain special issues. Statutorily there are three
11 special issues. However, one can be under the circumstances
12 presented deleted, and that factor will not be a concern in
13 this particular case. So the jury will be called upon to
14 answer one or two questions, depending on their answer to the
15 first questions.

16 Ladies, to your right you see the two special
17 issues. Under the hypothetical, and we're going to assume
18 that you're jurors, you're in the penalty stage of the trial,
19 you are looking at either life or death. Let me ask each of
20 you to read to yourself the special issues, after which I'll
21 give you a brief overview of their significance.

22 (Venirepersons given time to read.)

23 THE COURT: Have you-all completed that?

24 (Venirepersons nod head.)

25 THE COURT: Going into the penalty stage of

1 the trial, Special Issue Number 1 at the outset is answered
2 in the negative. It's the burden of proof, the
3 responsibility of going forth in an effort, if they can, to
4 convince the jury that question -- Special Issue Number 1
5 should be answered in the affirmative lies with the
6 prosecution. If the prosecution is able to convince all 12
7 jurors that Special Issue Number 1 should be answered yes,
8 only then does the jury next have to consider Special Issue
9 Number 2.

10 Special Issue Number 2, by varying sources, has been
11 called the safety net, the mercy question, or words and
12 phases to that effect. Neither side has the burden nor the
13 responsibility of coming forth with evidence with regard to
14 Special Issue Number 2. Mitigating evidence can be presented
15 by either side from any source. Mitigation evidence will not
16 be in the charge defined by me to you and your fellow jurors.
17 Mitigation evidence is whatever you consider it to be.

18 Now, the United States Supreme Court on a number of
19 occasions has made it very plain and clear to attorneys and
20 judges that before an individual, be it Texas or any State in
21 the Union that has a capital sentencing procedure, before an
22 individual may be constitutionally qualified to serve as a
23 juror in a death penalty case, that juror must understand and
24 appreciate that they must be willing to listen to and
25 seriously consider and evaluate mitigating evidence. And

1 then decide if as a result of the mitigation evidence a
2 defendant should live and not die.

3 Because, ladies, if the jury answers Special Issue
4 Number 1 yes, the defendant will be a continuing threat, if
5 you will, and Special Issue Number 2 no, there are no
6 mitigating circumstances as a result of which a death
7 sentence should not be imposed. By law, as the trial judge
8 over this particular case, I am required to sentence Jedidiah
9 Isaac Murphy to death. Unlike a number of other states, the
10 most commonly referred to is Florida, the jury makes a
11 recommendation, if you will, to the trial judge, not so
12 Texas. Believing as a body politic, having so much faith in
13 our fellow citizens, we, the legislature, have given to the
14 12 jurors the ultimate responsibility of making a life and
15 death decision. It's awesome. It's awesome.

16 Special Issue Number 1 yes, Special Issue Number 2
17 no, death. Any other configuration of responses is a life
18 sentence. And if you recall with me, as I told you back on
19 March 2nd, a life sentence for capital murder in Texas means
20 the individual so sentenced must serve 40 calendar years in
21 the penitentiary before being eligible for release under
22 supervision called parole. Doesn't mean 40 years automatic
23 out -- you know, the doors open and out you go. Eligibility
24 begins though after 40 calendar years, and that's
25 day-for-day, week-for-week, month-for-month, forty 365-day

1 years, other than leap years.

2 Are you with me so far?

3 Let me reintroduce those individuals whom you see
4 seated at the counsel table. I have previously introduced
5 them back on March 2nd, however, depending where you may have
6 been seated in that rather large Central Jury Room, you may
7 or may not have gotten a good look at them. Beginning with
8 the table closer to you, prosecutor's table, if you will,
9 lead prosecutor for the State in this case is the Honorable
10 Greg Davis.

11 MR. DAVIS: Good afternoon.

12 THE COURT: Seated next to him is the Chief
13 Prosecutor presently assigned by Dallas District Attorney
14 Bill Hill to this the 194th District Court, the Honorable
15 Mary Miller.

16 MS. MILLER: Good afternoon.

17 THE COURT: Moving on to the next table there
18 are three attorneys that collectively represent the
19 defendant, Mr. Murphy. Lead counsel for the defense, former
20 chief prosecutor in the Dallas District Attorneys Office,
21 board certified criminal law specialist, the Honorable Jane
22 Little.

23 MS. LITTLE: Good afternoon.

24 THE COURT: Seated next to her in the grey
25 sport coat is one of the co-counsels, again board certified

1 criminal law specialist, the Honorable Michael Byck.

2 MR. BYCK: Good afternoon.

3 THE COURT: Seated behind those two attorneys
4 in the black attire is their third co-counsel, the Honorable
5 Jennifer Balido.

6 MS. BALIDO: How are y'all?

7 THE COURT: And next to Mr. Byck in the blue
8 shirt and red tie, dark jacket, the accused, Jedidiah Isaac
9 Murphy.

10 THE DEFENDANT: Good afternoon.

11 VENIREPERSON: Good afternoon.

12 THE COURT: Ladies, on an individual basis
13 we'll begin with the State, followed by the defense. They
14 and I want to assure each of you at the outset that to their
15 questions there are no right or wrong answers as long as they
16 are truthful. We've been at this, I have and the attorneys
17 as well, for a good number of years. I assure you we don't
18 grade fellow citizenships on whether or not they are on a
19 death penalty jury or not. Not that at all.

20 Let me give you a secret up front. Quickest way to
21 get off this jury, for your consideration, is for you to tell
22 us, yeah, I want to be on this jury. Oh, we've had people in
23 the past, whoops, they have an agenda. They have an agenda.
24 Sometimes we're able to tell what that agenda is. Sometimes
25 not. But we would hope that those individuals ultimately

1 that sit on this jury say, well, you know, I'm not going to
2 break the door down to do this, but if it's a part of my
3 civic duty and responsibility, I conscientiously will listen
4 to the evidence, determine whether or not Mr. Murphy is
5 guilty or not guilty. If based upon the law and the evidence
6 I find him guilty, I will look to the special issues very
7 seriously, discuss in good faith with my fellow jurors the
8 evidence presented, the ramifications of the responses, and
9 let the chips fall where they may. If ultimately it be a
10 life sentence, so be it. If based upon the law and the
11 evidence statutorily the scheme is such that I find the
12 responses to the special issues result in death, won't be
13 happy about it, but I will feel that I have done my duty as a
14 citizen. That's all we can ask for.

15 With regard to this mitigation business, are you
16 individually willing to listen to, carefully evaluate
17 mitigation evidence, if such is presented, and then determine
18 whether or not it rises to the level as a result of which Mr.
19 Murphy should be given a life sentence as opposed to a death
20 sentence? Is there anybody that is unwilling to take that
21 responsibility upon their shoulders? None of you are adverse
22 to that type of an evaluation? Nobody at all? Nope.

23 Ladies and gentlemen, the bailiff will be excusing
24 two of you. We will begin by virtue of the number being the
25 lowest. Who is Ms. Gabel? Ms. Gabel, we'll begin first with

1 you.

2 Ms. Broome, Ms. Emeing, if you'd excuse yourself
3 with the bailiff, Ms. Madore. As soon as you are completed
4 with Ms. Gabel, each of you will be brought in individually.

5 Ms. Gabel, if you'd have a seat right here on the
6 witness stand. Might be a little more comfortable. We'll
7 move the special issue over to the left.

8 MS. BALIDO: Judge, can we have a second
9 outside the presence of the juror, please?

10 THE COURT: Yes.

11 THE BAILIFF: Go ahead and step back here.
12 Okay.

13 (Recess taken.)

14 MR. DAVIS: We've agreed to excuse Ms. Gabel,
15 Juror 262. We've agreed to excuse Juror 346.

16 THE COURT: Ms. Emeing?

17 MS. MILLER: Yes.

18 MR. DAVIS: Yes, Your Honor. We've also
19 agreed to excuse two jurors for Monday. That would be Juror
20 277, Karen Gray, as well as Juror 275.

21 THE COURT: Norma Rivera.

22 MR. DAVIS: Yes, Your Honor.

23 MS. MILLER: Yes.

24 THE COURT: Sheriff, you may excuse Ms. Gabel,
25 Ms. Emeing, and if you'd invite Mrs. Broome in.

1 (Venireperson brought into courtroom.)

2 THE COURT: Ms. Broome, we'll begin with the
3 State, again the Honorable Greg Davis.

4 Mr. Davis.

5 MR. DAVIS: Thank you.

6 THE COURT: Mr. Davis, Ms. Broome.

7 MR. DAVIS: May it please the Court.

8 BEVERLY BROOME

9 was called as a venireperson by the Court and, after having
10 been first duly sworn, testified as follows:

11 Voir Dire Examination

12 By Mr. Davis:

13 Q. Again, Ms. Broome, how are you? As the Judge told
14 you, I'm Greg Davis. Along with Mary Miller, I represent the
15 State of Texas. And for the next 30 minutes or so I'll have
16 a chance to speak with you about some of the issues in this
17 case. We'll talk about your questionnaire a little bit.
18 We'll talk about the death penalty in a little greater
19 detail. And we'll probably talk about some of the general
20 principles that apply in this case. And as the Judge said,
21 there are no right or wrong answers honestly. Most of my
22 questions will be how you feel about something, what your
23 opinion is about something. I've been at this long enough
24 and talked to enough people to know that everybody has
25 differing opinions. And as long as you tell us how you

1 honestly feel about it, that's all we as attorneys can expect
2 from you. Okay?

3 Ms. Broome, let me go back to the day you were in
4 the Central Jury Room, and at the time that Judge Entz
5 introduced Jedidiah Murphy to you, and at the time that he
6 announced to the large group that the State was seeking the
7 death penalty against Mr. Murphy, do you recall what your
8 first reaction to that was?

9 A. I was a little bit stunned.

10 Q. Okay. Had you ever served on a jury before?

11 A. Yes.

12 Q. Okay. But certainly not in a death penalty case?

13 A. No.

14 Q. Okay. You've had some time now to think about the
15 proceedings, think about what the Judge has told you that
16 day. And I know again from experience that a number of
17 people may have a change of heart over the two or three-week
18 period here, and I know a lot of people may have feelings
19 about the death penalty in the abstract. They may be against
20 it. They may be for it. But I'd like to remind people that
21 now it's become a bit personal because as you can see,
22 Jedidiah Murphy over here, there is nothing abstract about
23 him. He's a living, breathing human being. And if the State
24 of Texas prevails in this case, if a death sentence is handed
25 out, I expect that it will be carried out, and there will

1 come a day in Huntsville when he's going to lie dead on a
2 gurney as a result of the verdict rendered in this court.

3 Now, having said all of that, I need to ask you, Ms.
4 Broome, how you honestly feel about participating in this
5 type of case whereas the Judge said you may be required to
6 actually take pen in hand, sign a verdict form which will
7 ultimately result in the death of this man seated to my far
8 left, Jedidiah Murphy.

9 A. I'm very uncomfortable about it.

10 Q. Can you share a little bit more about what is
11 actually making you uncomfortable about the prospect?

12 A. Well, first of all, not knowing this person, not
13 knowing anything about this person until you actually hear --
14 life is -- death is part of life.

15 Q. Uh-huh.

16 A. And we're all terminal.

17 Q. Uh-huh.

18 A. And I -- you know, you just don't -- I just don't
19 feel like it's for me to decide that someone else should die.

20 Q. And I appreciate that. I like to tell jurors
21 because I have heard that expressed before, that I appreciate
22 you being honest with us. We would not want to put anyone in
23 the position where they would be compelled to violate their
24 conscience, their moral beliefs, religious beliefs, or
25 anything of that order.

1 Let me just ask you kind of a base line question
2 here. Do you feel like your feelings are strong enough and
3 they are such that they would genuinely compromise your
4 ability to serve on this type of a jury?

5 A. Yes, they are very strong.

6 Q. Okay. And I take it that they are feelings -- Ms.
7 Broome, I think again and all of the attorneys down here are
8 sensitive to that. None of us would want to put you in this
9 kind of situation. Mr. Byck has indicated to me that we're
10 going to agree to excuse you. We're not going to force you
11 to serve on this jury. I do want to thank you for coming
12 down. I want to thank you for your honesty. We thank you
13 very much.

14 THE COURT: Thank you, Ms. Broome, you are
15 excused.

16
17 (Recess for the day.)

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Reporter's Certificate

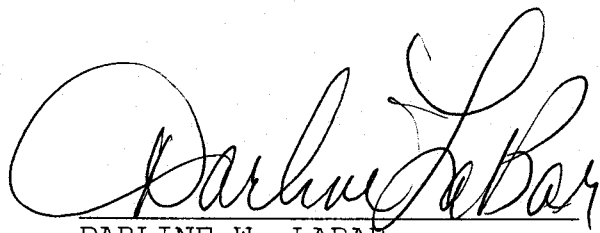
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 15th day of November, A.D., 2001.



DARLINE W. LABAR
Official Court Reporter
194th Judicial District Court
Dallas County, Texas
(214) 653-5803

Certification No. 1064 Expires December 31, 2002

REPORTER'S RECORD

74145

VOLUME 9 of 65 VOLUMES

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT
VS. : DALLAS COUNTY, TEXAS
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

INDIVIDUAL VOIR DIRE

FILED IN
COURT OF CRIMINAL APPEALS

DEC 5 2001

A P P E A R A N C E S:

Troy C. Bennett, Jr., Clerk

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FOR THE STATE OF TEXAS;

MS. JANE LITTLE, Attorney at Law, SBOT # 12424210
MR. MICHAEL BYCK, Attorney at Law, SBOT # 03549500
MS. JENNIFER BALIDO, Attorney at Law, SBOT # 10474880
Dallas County Public Defender's Office
Phone: 214-653-9400
FOR THE DEFENDANT.

On the 19th day of March, 2001, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable F. Harold Entz, Jr.,
Judge presiding, held in Dallas, Dallas County, Texas:
Proceedings reported by machine shorthand, computer
assisted transcription.

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NO EXHIBITS THIS VOLUME

1 P R O C E E D I N G S

2 THE COURT: Ms. Stevens, Mr. Sullivan, may I
3 ask that you remain seated, raise your right hand and be
4 sworn in, please.

5 (Venirepersons sworn.)

6 VENIREPERSONS: I do.

7 THE COURT: Thank you. You may lower your
8 hands. Welcome back.

9 Ms. Stevens, Mr. Sullivan, let me kind of jump start
10 the proceedings, if I may. Let us for purposes of our
11 discussion this morning consider a hypothetical scenario.
12 Let's assume that jury selection in this trial has been
13 completed, at the conclusion of which becomes your fate that
14 you are 2 of the 12 jurors.

15 Furthermore, for sake of discussion this morning,
16 let's assume the guilt/innocence stage of the trial has been
17 completed, after hearing the evidence the instructions given
18 to the jury by me, summations, arguments, if you will, by the
19 attorneys, and the deliberations that you've conducted with
20 your other fellow jurors, you've reached the conclusion that
21 the presumption of innocence has been overcome, each of the
22 allegations made a part of the indictment in this case has
23 been proven to your satisfaction, and collectively the
24 satisfaction of the jury, beyond a reasonable doubt, as a
25 result of which you would be obligated to return to court,

1 indeed one of you may be the presiding juror, affix your name
2 to the verdict form wherein you indicate on behalf of your
3 fellow jurors and yourself that Jedidiah Isaac Murphy is
4 guilty of capital murder. Under Texas procedure that same
5 12-person jury of which under my hypothetical you are 2 of
6 the 12 would be then called upon to determine whether or not
7 Mr. Murphy receives a life sentence or a death sentence. The
8 statute is so structured going into the penalty stage of the
9 trial to favor a life sentence and not a death sentence
10 because of the obvious irrevocability of a death sentence.
11 Depending upon the answers that the jurors make to two
12 special issues, which have been given to us by the
13 legislature, will determine whether or not by law I am
14 required to sentence in this case Mr. Murphy to life or
15 death. Unlike a number of states where the jury's
16 recommendation is just that, a recommendation to the Judge
17 and it's not binding upon the Judge, not so in Texas.
18 Believing in the value of the individual citizens as strongly
19 as we do, given our populist tradition, jurors make the
20 determination and not a Judge. Though the United States
21 Supreme Court has on a number of occasions indicated that you
22 do not have a constitutional right to have a jury set the
23 punishment, they never said that jurors cannot
24 constitutionally exercise that right. And that's the side of
25 the coin that Texas has come down to favor.

1 For your benefit we have put the two special issues
2 up to your right. Let me ask that you read them to
3 yourselves, at conclusion of which I'll explain to you the
4 effect the answers will have.

5 (Venirepersons given time to read questions.)

6 THE COURT: Have you completed it? Okay. Ms.
7 Stevens, Mr. Sullivan, unlike virtually every other criminal
8 offense in an assaultive offense or a drug offense or a
9 property crime in Texas wherein there is a range of
10 punishment, first degree 5 to 99 years or life, or a second
11 degree felony -- and I'm not going to give you a laundry
12 list, 2 to 20, third degree is 2 to 10. Not so in capital.
13 It's either/or. Either life or death.

14 Recall with me, if you will, back on March 2nd, I
15 indicated a life sentence for capital murder in Texas results
16 in that individual being sentenced to 40 calendar years in
17 the penitentiary before being eligible for release on
18 supervision called parole. That's 40 years day-for-day,
19 week-for-week, month-for-month, year-for-year.

20 Taking Special Issue Number 1 into consideration,
21 jurors may take into consideration all of the evidence
22 they've heard in the first stage of the trial and other
23 evidence that may or may not be presented in the second stage
24 of the trial, but taking all the evidence that is offered
25 which the Court determines relevant and admissible, at the

1 conclusion of the deliberations on Special Issue Number 1,
2 the unanimous answer by each 12 jurors is yes, then and only
3 then must the jury go on to consider Special Issue Number 2.
4 Because my instructions in the Court's charge will be such
5 that if you answer Special Issue Number 1 no, it remains a
6 life sentence. But if you answer Special Issue Number 1 yes,
7 then you go on to Special Issue Number 2, the State has the
8 burden of proof, the requirement of going forth with the
9 evidence, if you will, on Special Issue Number 1. Neither
10 side has the burden on Question Number 2.

11 United States Supreme Court on a number of occasions
12 have told us all that to be a constitutionally qualified
13 juror in a death penalty case, Texas, California, Florida,
14 anywhere in between -- to be a constitutionally qualified
15 juror with regard to Special Issue Number 2, and it's got
16 different forms and fashions that the 38 states that have
17 some form or fashion of the death penalty, jurors must state
18 to all of us before the trial begins that they're willing to
19 listen to determine whether or not mitigating evidence is
20 presented, and then if they determine that mitigating
21 evidence rises to the level because of which the defendant
22 should live and not die, give effect to that mitigating
23 evidence. On the other hand, having answered Special Issue
24 Number 1 yes and Special Issue Number 2 no, after considering
25 the mitigating evidence under my hypothetical, a yes to

1 Number 1, a no to Number 2 equals under Texas law a death
2 sentence being pronounced by me. Any other differing
3 configuration is a life sentence, the 40 years.

4 Are each of you willing to tell us at the outset,
5 though we cannot and I will not be defining mitigating
6 evidence -- mitigating evidence is whatever you determine it
7 to be. Some individuals have told us abuse as a child,
8 learning disability, born as a crack baby. Matters such as
9 that may be considered by them as mitigating evidence. I
10 don't know whether any of that falls within your inventory of
11 which you may consider mitigating evidence or something else.
12 Mitigating evidence is whatever you determine it to be.

13 Are each of you willing to tell Mr. Murphy, the
14 attorneys, and I that if selected as a juror, you are willing
15 to listen to determine whether or not mitigating evidence is
16 presented and then if presented, evaluate it in light of
17 Special Issue Number 2?

18 VENIREPERSON: Yes.

19 THE COURT: Ms. Stevens, are you?

20 VENIREPERSON: I'll try.

21 THE COURT: That's all we ask. Just because
22 you hear mitigating evidence doesn't mean, whoops, bingo,
23 automatic. If it rises to that level as a result of which,
24 in this case Mr. Murphy, should live and not die, are you
25 willing to give effect to it? It's kind of a mercy question

1 or safety net, if you will. That will be your last chance.
2 It's a last chance question.

3 Are you with me so far?

4 Going to introduce those individuals whom you see
5 seated at the counsel table. They have previously been
6 introduced to you, but it's been a little while ago and
7 depending where you were seated in the Central Jury Room, how
8 good a look you got at them, I don't know.

9 Beginning with the table closer to you, the lead
10 prosecutor for the State, the Honorable Greg Davis.

11 MR. DAVIS: Good morning.

12 THE COURT: He is joined by a colleague who
13 had a little bit of traffic problems and called me and
14 indicated to me that she, as soon as the traffic problems
15 permitted, coming from far north part of the county, she'd
16 get here, the Honorable Mary Miller.

17 MS. MILLER: Good morning.

18 THE COURT: Moving on to the defense table, we
19 have first lead counsel for the defense, former chief
20 prosecutor in the Dallas District Attorneys Office, board
21 certified criminal law specialist from the State Bar of
22 Texas, the Honorable Jane Little.

23 MS. LITTLE: Good morning.

24 VENIREPERSON: Hi.

25 THE COURT: Seated next to Ms. Little is a

1 co-counsel, also a board certified criminal law specialist,
2 the Honorable Michael Byck.

3 MR. BYCK: Good morning.

4 THE COURT: And seated next to Mr. Byck is
5 their client, the accused, Jedidiah Isaac Murphy.

6 THE DEFENDANT: Good morning.

7 VENIREPERSON: Hi, morning.

8 THE COURT: I anticipate there may well be a
9 third defense attorney, the Honorable Jennifer Balido will be
10 coming in, to my understanding. She's doing some work on
11 this case as I speak, I think.

12 We will begin with individual questioning. To the
13 attorneys' questions, let me tell you up front, there are no
14 right or wrong answers. I hope you didn't lose any sleep
15 worrying about it.

16 Mr. Sullivan, do you have a question for me, sir?

17 VENIREPERSON: Yes, I was going to tell you
18 that I have a speech impediment, but I will get the answers
19 out. Okay.

20 THE COURT: We work with people like that on a
21 regular basis, so we want you not to be embarrassed.

22 VENIREPERSON: Okay.

23 THE COURT: We are very sympathetic. We are
24 very understanding, I assure you.

25 VENIREPERSON: Okay.

1 THE COURT: We don't grade citizenship.
2 Citizenship by virtue of the responses. The only incorrect
3 answer to a question is an untruthful answer. It may not be
4 everybody's cup of tea. Let me give you a hint. The
5 quickest way to get off this jury is to tell the attorneys
6 and me, oh, I want on this jury. Trust me, all of us have
7 been at this, you know, more than a year or so. If an
8 individual seated up there shows an aggressive desire to get
9 on the jury, we back off. They have some sort of agendas.
10 Most likely we know what it is, but we trust that you will
11 look upon this as perhaps a reluctant, but necessary
12 obligation of citizenship. Assure you that the attorneys
13 that will be questioning you are some of the best not only
14 that Dallas County but Texas, but this country has to offer.
15 You will be treated to some of the best lawyering that you
16 could ever hope to witness and be a part of.

17 Ms. Stevens, only because your number is lower than
18 Mr. Sullivan, we will begin with you. If you would please
19 have a seat up here in the jury box.

20 Mr. Sullivan, if you would be kind enough to excuse
21 yourself with Mr. Rees, the bailiff. And as soon as we've
22 completed the questioning of Ms. Stevens, Mr. Sullivan, we'll
23 invite you in.

24 VENIREPERSON: I don't want to go first.

25 (Venireperson seated.)

1 THE COURT: Ms. Stevens, have a seat. Be as
2 comfortable as you can. Are you ready to proceed?

3 VENIREPERSON: Yes.

4 THE COURT: Relax as much as you can. Okay?

5 VENIREPERSON: Okay.

6 THE COURT: We will begin with State and the
7 Honorable Greg Davis.

8 Mr. Davis.

9 MR. DAVIS: Good morning.

10 MR. DAVIS: May it please the Court.

11 RHONDA STEVENS

12 was called as a venireperson by the Court and, after having
13 been first duly sworn, testified as follows:

14 Voir Dire Examination

15 By Mr. Davis:

16 Q. Good morning again, Ms. Stevens. How are you?

17 A. Fine.

18 Q. As the Judge said, you know, there's no reason to be
19 nervous up there. Most of the questions that I'm going to
20 ask you this morning are going to deal with how you feel
21 about something, what your opinions are, and I've been at
22 this long enough to know that everybody feels differently
23 about different things. So as long as you tell us how you
24 honestly feel, that's all we expect. Okay?

25 A. Okay.

1 Q. Ms. Stevens, it's been sometime since you filled out
2 the questionnaire. I guess over a couple of weeks. And
3 sometimes people have some time to think about these
4 matters. Sometimes they change how they feel. And the
5 question I'd like to ask you first of all this morning is,
6 having had a chance to think about the proceedings, how do
7 you really feel about participating in this kind of case
8 where the State of Texas is seeking the death penalty against
9 Mr. Murphy?

10 A. I would rather not be on the jury. I'd rather
11 someone else do it, but -- I feel like I have an obligation,
12 that if I'm called, that I should show up and do my job.

13 Q. Okay. If the State of Texas proves Mr. Murphy's
14 guilt beyond a reasonable doubt, if we meet our burden of
15 proof, could you find him guilty of capital murder, if we met
16 our burden of proof?

17 A. I probably could, but it would be the last resort.
18 I mean, I would really think about it a long, long time.

19 Q. Okay. Well, we certainly don't want anybody to take
20 this lightly. You know, the burden of proof is beyond a
21 reasonable doubt. And that's a high burden of proof. And we
22 certainly don't want jurors who will help us by lowering that
23 burden of proof. But the law says if we meet our burden of
24 proof, if we prove those things beyond a reasonable doubt,
25 then we're entitled to a guilty verdict and I just need to be

1 assured that if we do meet our burden of proof, that you can
2 find this man guilty knowing that you're that much closer to
3 a possible death sentence?

4 A. Yes, you would have to prove it.

5 Q. Okay. Fair enough. Now, on Questions 1 and 2, if
6 the evidence persuaded you that the answers should be yes and
7 no which would result in a death sentence, if the evidence
8 showed that, could you answer Questions 1 and 2 yes and no,
9 knowing that that will result in an automatic death sentence
10 to be implied -- to be imposed by Judge Entz? Could you do
11 that also?

12 A. It would be very hard, but I could do it.

13 Q. And again, we don't expect anybody to take this
14 lightly. This is a very serious matter. I can also tell you
15 the one thing we're very serious about is we want Mr. Murphy
16 to receive a fair trial. We want everyone at the end of this
17 trial to be able to leave this courtroom knowing that all the
18 rules were followed, that he was afforded every right that
19 the law gives him, and that we don't have to second guess
20 what we did. So we want everybody to take this very
21 seriously. Does that seem fair to you also?

22 A. Uh-huh.

23 Q. Let me ask you: Have you heard of any cases
24 recently, maybe you've seen them in the newspaper, read about
25 them, maybe you saw them on television, where you heard about

1 a capital murder case and you thought to yourself, you know,
2 depending on what the facts are, I think that might be a
3 death penalty case? Have you heard anything like that
4 lately?

5 A. The only thing I remember is on the news saying a
6 child a trial lasted 27 weeks and I thought, whoa, that's a
7 long time. And that's the only thing I remember seeing on
8 TV.

9 Q. That was probably in California.

10 A. Yes, it was a long time.

11 Q. That wouldn't be here in Dallas County, I can assure
12 you. You know, I know after the O.J. Simpson trial, we had a
13 lot of jurors coming down and they were pretty concerned this
14 may last six months. That simply doesn't happen. This case
15 here -- I would anticipate -- I think the Judge may have
16 already told you, I would anticipate that the evidence could
17 be concluded in about a week and a half. That's what we're
18 anticipating here. Having tried a case with Judge Entz, he
19 keeps things moving. We won't waste your time so I don't
20 anticipate any 27 weeks.

21 Some people have told us in the past few days that
22 they've heard about the Texas 7 case. You know, the inmates
23 that escaped from the prison system? Some of those
24 individuals were actually serving life sentences when they
25 escaped, came up to Dallas, killed a police officer, and then

1 escaped up to Colorado. Of course, that would be a capital
2 murder because they've killed a police officer while he was
3 discharging his official duties.

4 Do you have any feelings about that particular case?

5 A. I heard about it on the news. I don't know all the
6 details. I just heard bits and pieces about it.

7 Q. Okay.

8 A. That's all I can tell you.

9 Q. Okay. All right. Let me -- let me just ask you in
10 general, do you think that there are people here in Dallas
11 County, Ms. Stevens, who are capable of killing another
12 person to get their property from them?

13 A. I hope not.

14 Q. Okay. Do you think that it's possible that there
15 may be people who could kill another person to get their
16 property and then have absolutely no remorse at all about
17 having done that?

18 A. On the trials in the past that I have seen on the
19 news and all it seems like some people don't, but you're not
20 there to hear all the details, so I'm not sure.

21 Q. Right.

22 MR. DAVIS: Excuse me just a moment, Ms.
23 Stevens.

24 Your Honor, could we approach?

25 (Side bar discussion, then juror excused.)

1 THE COURT: Thank you, Ms. Stevens. You are
2 excused from further consideration.

3 VENIREPERSON: Thank you.

4 (Ms. Stevens Excused From Consideration)

5 THE COURT: May we have Mr. Sullivan, please,
6 Sheriff?

7 (Mr. Sullivan excused during recess.)
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Reporter's Certificate

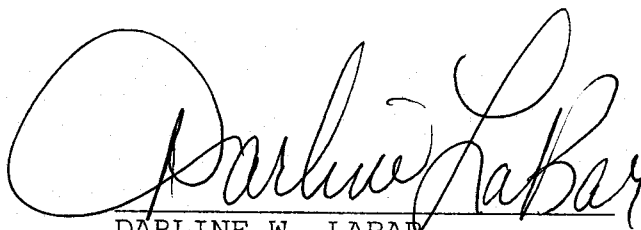
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 15th day of November, A.D., 2001.



DARLINE W. LABAR
Official Court Reporter
194th Judicial District Court
Dallas County, Texas
(214) 653-5803

Certification No. 1064 Expires December 31, 2002

REPORTER'S RECORD

74145

VOLUME 10 of 65 VOLUMES

TRIAL COURT CAUSE NO. F00-02424-NM

THE STATE OF TEXAS : IN THE DISTRICT COURT
VS. : DALLAS COUNTY, TEXAS
JEDIDIAH ISAAC MURPHY : 194TH JUDICIAL DISTRICT

INDIVIDUAL VOIR DIRE

FILED IN
COURT OF CRIMINAL APPEALS

DEC 5 2001

A P P E A R A N C E S:

Troy C. Bennett, Jr., Clerk

HONORABLE BILL HILL, Criminal District Attorney
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FOR THE STATE OF TEXAS;

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Dallas County Public Defender's Office
Phone: 214-653-9400
FOR THE DEFENDANT.

On the 20th day of March, 2001, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable F. Harold Entz, Jr.,
Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by machine shorthand, computer
assisted transcription.

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1 P R O C E E D I N G S

2 THE COURT: Let me ask each of you to remain
3 seated, raise your right hands, and again be sworn in.

4 (Venirepersons sworn.)

5 VENIREPERSON: I do.

6 THE COURT: Thank you. Lower your hands.
7 Good morning and welcome back.

8 VENIREPERSON: Good morning.

9 THE COURT: Before I introduce the individuals
10 whom we see seated at the counsel table, in absentia those
11 that are on their way, having already called in and
12 apparently there's a terrible automobile accident and
13 attendant problems in a couple of directions, so in the
14 interest of your time we'll begin a little bit shorthanded
15 from an attorney standpoint, but nevertheless we'll move
16 right ahead.

17 We are now into the second week of individual
18 questioning. This is a procedure that is allowed by the Code
19 of Criminal Procedure, and both the State and the defense
20 have taken advantage of this provision and have elected, as
21 virtually is done in 100 percent of capital cases tried
22 throughout the States, individual questioning. Before you
23 leave us the latest -- by late morning you will know whether
24 you remain under consideration.

25 We plan on qualifying 48 prospective jurors, after

1 which each side will be allotted their peremptory
2 challenges. These are excusing otherwise qualified jurors
3 other than by race or gender, and the resulting process will
4 narrow down the pool of 48 to the 12 that will be jurors in
5 this case. You may be well 2 of the 12 that are ultimately
6 selected. And for the sake of my hypothetical examination,
7 let's assume that has happened.

8 Let's assume, if we may, hypothetically, jury
9 selection has been completed, both of you are among the 12
10 individuals that will be jurors in the case. Incidentally
11 although we anticipate this process will end far, of course,
12 before we begin the trial, we plan on beginning testimony in
13 the trial on the 29th of May, a Tuesday. Congress has
14 declared that the 28th will be that day this year that
15 Memorial Day is officially, in quotes, celebrated in the
16 United States. Anticipate the trial will last probably
17 through that week, and maybe a bit into the next week, but
18 unlike some trials about which we've heard in California and
19 other states, be nothing like a California type process.

20 Do either of you know of any reason why right now if
21 you're selected as a juror that you could not return on the
22 29th to serve as a juror in the case? Either of you?

23 (Venireperson nods head.)

24 THE COURT: Therefore hypothetically let's
25 assume not only that you're on the jury, but the first stage

1 of the trial has been completed, what we call the
2 guilt/innocence stage. Individually each of you, along with
3 the other 10 that make up the jury, have reached the
4 conclusion, based upon the law and the evidence of the law
5 given to you by me, that the defendant, Mr. Murphy, has been
6 found guilty of capital murder, that is, he committed a
7 murder of a named individual, Bertie Cunningham, on or about
8 a date certain Dallas County, Texas, during the commission of
9 a robbery and/or kidnapping.

10 Let's assume hypothetically that water has gone over
11 the dam. You and the other 10 jurors would then be called
12 upon to determine the punishment. Unlike virtually every
13 other criminal offense in Texas that has a varying range of
14 punishment, not less than X nor more than X or Y, optional
15 fine not to exceed \$10,000 in the case of felonies, not so in
16 a capital case. It's an either/or. Either life in the
17 penitentiary or death by lethal injection.

18 As I told you on March 2nd when we were assembled
19 down in the Central Jury Room, the State has made known its
20 intent in this case to seek the death penalty. Going into
21 the penalty stage of a capital trial in which the State is
22 seeking death, the law is so structured to favor a life
23 sentence and not death. And I think all of us would agree
24 that because of the irrevocability of a death sentence, that
25 is the proper legal structure that we can appreciate.

1 Depending upon the answers to special issues, unlike
2 a number of states where the jury makes a recommendation to
3 the Judge as to whether or not it's life or death, Florida
4 being the classic example, not so in Texas. Given our
5 populist tradition, faith in the people, if you will, jury
6 instructs the Judge as to what the punishment should be. I'm
7 not a thirteenth juror. Nor is any trial judge. Nor is any
8 appellate judge for that matter. The jury says life, it's
9 life. If as a result of the answers to special issues the
10 sentence is death, is death.

11 Under Texas law in a capital case if it is a life
12 sentence that is the result. By law a defendant must serve
13 40 calendar years. It's day-for-day, week-for-week,
14 month-for-month, in custody before being eligible for release
15 on supervision called parole. Does not mean 40 years,
16 penitentiary doors fling open, and out a defendant goes.
17 Process of parole eligibility commences on that day.

18 We have for your benefit the two special issues that
19 the jury will be called upon -- again, and I emphasize under
20 this hypothetical basis because that's the thrust of which
21 you'll be talking about with the attorneys and me
22 individually in a few moments. We have the two special
23 issues that the jury will be called upon to address to your
24 right. Let me ask that you read them to yourselves, at the
25 conclusion of which I will explain the import or effect that

1 each of them have.

2 (Venirepersons given time to read issues.)

3 THE COURT: Have you both completed that?

4 (Venirepersons nod head.)

5 THE COURT: Special Issue Number 1 begins with
6 the jury having that question answered in the negative.

7 That's the way it begins. The State -- the prosecutor --

8 MS. LITTLE: Your Honor, may I approach,
9 please?

10 (Attorneys approach the side of the bench.)

11 THE COURT: Sheriff, will you retire the
12 jurors momentarily?

13 (Recess taken.)

14 THE COURT: Trial record reflect that Mr.
15 Murphy indicated to the bailiffs that he was feeling ill, as
16 a result of which he was excused from the courtroom.

17 Mr. Murphy, do you feel that you're well enough that
18 we can continue?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you feel again becoming ill, if
21 you'll let the bailiffs know, and obviously we will address
22 your concerns as they become apparent.

23 Sheriff, may we have the jury, please?

24 THE BAILIFF: Yes, sir.

25 THE COURT: As circumstances permit.

1 (Venirepersons returned to courtroom.)

2 THE COURT: Continuing where we left off with
3 the two special issues. The responsibility of proving, if
4 they can, that special issues should be answered in the
5 affirmative or yes lies with the State, the District
6 Attorneys Office, the prosecutors, if you will. Jurors may
7 take into consideration all of the evidence they have heard
8 in the guilt/innocence stage of the trial, other evidence
9 presented in the penalty stage of the trial in determining
10 the answer to Special Issue Number 1. If after deliberation
11 the jurors are not convinced that Special Issue Number 1
12 should be changed from a no to a yes, but should remain no,
13 you terminate your deliberations, return to the courtroom,
14 presiding juror would make us aware of that decision, and a
15 life sentence will result. Need not go on to Special Issue
16 Number 2.

17 Only if after deliberation the jurors are unanimous
18 in their agreement that Special Issue Number 1 should be
19 answered yes, need the jury go on to Special Issue Number 2.

20 Special Issue Number 2 has been variously described
21 as the safety net, the mercy question, or phrases to that
22 effect. Neither side has the burden of proof, the
23 responsibility of going forth with the evidence as it relates
24 to Special Issue Number 2. United States Supreme Court on a
25 number of occasions of recent note have indicated to all of

1 us that to be a constitutionally qualified juror in a death
2 penalty case in which the State is seeking death, to be
3 qualified, a juror must in their heart of hearts tell
4 themselves and thereby us that they would be willing to
5 evaluate all of the evidence, to evaluate whether or not
6 mitigating evidence is presented, and if mitigating evidence
7 is presented, give it careful consideration, and then
8 determine if as a result of that mitigating evidence it rises
9 to the level as a result of which the defendant, in this case
10 Mr. Murphy, should live and not die.

11 United States Supreme Court has said that trial
12 judges need not, indeed should not, define mitigating
13 evidence. Mitigating evidence therefore is somewhat like
14 beauty. It's in the eye of the beholder. Whatever therefore
15 a juror determines to be mitigating evidence is mitigating
16 evidence. Examples in the past, we have heard, child abuse,
17 physical, sexual, or the like; crack baby, matters such as
18 that; alcoholism; drug addiction. Some think that's
19 aggravating, others think, well, under certain circumstances
20 I could consider it mitigating.

21 Let me ask you this: Per the Supreme Court, are
22 each of you willing to listen to determine whether or not
23 mitigating evidence is presented and then give it a fair and
24 impartial consideration before answering Special Issue Number
25 2? Are both of you willing to do that?

1 VENIREPERSON: Yes.

2 THE COURT: Ms. Cohlma are you?

3 VENIREPERSON: Sir, yes.

4 THE COURT: Are both of you willing to do it?

5 VENIREPERSON: Will you repeat the question?

6 THE COURT: Are you willing to listen to see
7 whether or not mitigating evidence is presented, and if
8 mitigating evidence is presented that rises to the level
9 because of which in this case Mr. Murphy should live and not
10 die, give effect to that mitigating evidence?

11 VENIREPERSON: Yes, sir.

12 THE COURT: Because if you answer Special
13 Issue Number 1 yes and Special Issue Number 2 no, by law I am
14 required to sentence Mr. Murphy to death.

15 VENIREPERSON: No, I couldn't do that.

16 THE COURT: All right. Any other
17 configuration -- if you answer yes to the continuing threat
18 to society and yes to mitigating evidence, it's a life
19 sentence. See, when you get to Special Issue Number 2, that
20 is really the last chance the jury will have in essence from
21 a legal structured standpoint to give him a life sentence.

22 MR. BYCK: Your Honor --

23 MS. MILLER: Judge, can we approach?

24 MR. BYCK: -- may we approach?

25 (Side bar discussion.)

1 THE COURT: Ms. Madore, if you would excuse
2 the jurors.

3 Ladies and gentlemen, thank you very much. You are
4 excused from consideration.

5 (Morning recess.)

6 (Venirepersons brought into courtroom.)

7 VENIREPERSON: This is it?

8 THE COURT: This is it. A lot more
9 comfortable than out there. Good afternoon, welcome back.

10 VENIREPERSON: Hello.

11 VENIREPERSON: Hello.

12 THE COURT: Let me ask each of you if you'd
13 remain seated, raise your right hands and be sworn in,
14 please.

15 Gentlemen, do you swear or affirm that you will make
16 true answers to such questions as may be propounded to you by
17 the Court touching your service and qualifications as a
18 juror, so help you God?

19 VENIREPERSON: I will.

20 (Venirepersons sworn.)

21 THE COURT: Thank you, gentlemen. Lower your
22 hands.

23 Gentlemen, we're now in the second week of
24 individual questioning. We will continue until we have
25 identified 48 qualified prospective jurors in this case.

1 Once that number has been reached, the attorneys will be
2 asked to exercise their peremptory challenges, at the
3 conclusion of which the first 12 that survive, for lack of a
4 better voice of verbs, this process will be the jurors in the
5 case. The peremptory challenges, per the United States
6 Supreme Court, can be based neither on race or ethnic
7 background or gender. Does not mean that individuals of
8 color cannot be peremptory challenged, but that cannot be the
9 basis of the challenge. Supreme Court in a number of cases
10 has made that very, very plain to both the State and the
11 defense in criminal cases and both sides in civil cases as
12 well.

13 Though we hopefully anticipate this jury selection
14 process will end way before the end of May, we anticipate
15 beginning the testimonial stage of the trial on Tuesday, May
16 29th. United States Congress has declared that the Monday
17 before is the date this year that Memorial Day will be
18 officially celebrated throughout the United States, so the
19 day after Memorial Day is celebrated we'll begin the
20 testimony. At this stage the attorneys have indicated they
21 anticipate probably the trial will last somewhere between
22 five and eight working days. Given the absence of media
23 attention so far, and I see nobody in the media out in the
24 gallery area, hopefully you will not be sequestered. However
25 that probability always exists, regardless of the trial, but

1 we are not anticipating the jury will be sequestered in this
2 case. So you'll be able to put your heads on your own pillow
3 in your own bed every night.

4 Do either of you gentlemen know any reason now that
5 would prevent your returning back on the 29th of May to
6 participate as jurors if you are selected as one of the 12
7 jurors in the case? Either of you know of any reason?

8 VENIREPERSON: No.

9 VENIREPERSON: No.

10 THE COURT: Good. Gentlemen, let's move right
11 in, if we may, to the matter at hand this afternoon. Before
12 you leave us, after your individual interview, you will know
13 whether or not you remain under consideration, be free to go
14 back home, use your, you know, your regular work schedule
15 until return, if you are selected ultimately as one of the
16 jurors in the case. We hope that you would not go back to
17 the Dallas Morning News and read the archives of the paper,
18 when the incident occurred, to otherwise further inform
19 yourself about the circumstances, but would rely, if a juror,
20 solely on the evidence presented in the courtroom to make
21 your decision, which I trust both of you understand the
22 purpose for that.

23 Let's fast forward on a hypothetical scenario or
24 proposition if we may. Let's assume that jury selection has
25 been completed. Turns out that you are 2 of the 12 jurors.

1 After hearing the evidence in the guilt/innocence stage of
2 the trial, have heard the instructions read to you by me,
3 called the Court's charge, you have furthermore heard the
4 summations by the attorneys, completed your deliberations.
5 Each of you individually, along with the other 10 members of
6 the jury, have reached the conclusion that the presumption of
7 innocence which every defendant is entitled has been overcome
8 by the evidence and you find each of the significant
9 allegations in the indictment which we call elements have
10 been satisfactorily proven to your mind beyond a reasonable
11 doubt as a result of which you and your other fellow 10
12 jurors return into this courtroom with a verdict that says,
13 Jedidiah Isaac Murphy, we, the jury, find you guilty of
14 capital murder. Again, this is just a scenario to get us
15 into the matter at hand with regard to what we call
16 disqualifying a jury.

17 Unlike virtually every other criminal offense in
18 Texas which has a range of punishment, not less than so many
19 years, nor more than so many years, depending on the type of
20 offense, capital murder is unique. An individual found
21 guilty of capital murder has only two possible punishments:
22 Life in the penitentiary or death by lethal injection. Going
23 into the penalty stage of the trial under this hypothetical
24 we're discussing this afternoon, because of the seriousness
25 of the ultimate punishment, death, the Texas legislature has

1 structured the statute so that a life sentence is preferred
2 at the outset and not death. It doesn't start at death and
3 then work back to life. It starts at life, and then based
4 upon the jury's decision may become death. Unlike most other
5 states where the jury's recommendation on punishment is just
6 that, a recommendation to the trial judge, not so in Texas.
7 The jury's answer to certain special issues which we'll talk
8 about with you gentlemen momentarily, absolutely requires
9 based upon the answers to the questions, the trial judge
10 sentencing a defendant either to life or death.

11 Trial judge is not a thirteenth juror. I cannot
12 overrule a jury. Jury's decision is final. Words of the
13 late President Harry Truman, the buck stops with the jury.
14 Your decision is it. Is it. Neither I nor any appellate
15 court will second guess your decision with regard to life and
16 death. It rests upon your shoulders, gentlemen, and the
17 other 10.

18 Now, we have for your benefit blown up and have to
19 your right the special issues. Let me ask that you read them
20 to yourselves, at the conclusion of which I will explain to
21 you the import or the significance of your answers.

22 (Venirepersons read issues.)

23 THE COURT: Have you completed them? Fine.

24 Gentlemen, at the commencement of the penalty stage
25 of the trial, Special Issue Number 1 is answered in the

1 negative, no. It remains a negative or no unless or until
2 evidence is presented to you that convinces you beyond a
3 reasonable doubt that the issue should be answered yes. The
4 State of Texas, the prosecutors, the Dallas District
5 Attorneys Office, has the responsibility, we call it the
6 burden of proof, of proving, if they can, to each individual
7 juror that Special Issue Number 1 should be answered yes. If
8 they fail to do so, the answer remains no. And if that
9 should be the case, you need not ever get into worrying or
10 discussing or deliberating on Special Issue Number 2.
11 Because if after hearing the evidence, deliberating, the jury
12 thinks that Question Number 1 or Special Issue Number 1
13 should remain no, the result will be a life sentence.

14 Gentlemen, let me remind you, as I did back on March
15 2nd, a life sentence to a capital murder conviction equals 40
16 calendar years in the penitentiary before in this case Mr.
17 Murphy will be eligible for consideration for release on
18 parole. 40 calendar years is day-for-day, week-for-week,
19 month-for-month, year-for-year. 40 -- 40 calendar years. If
20 the jury, after deliberation, answers Special Issue Number 1
21 yes, only then need they go on to Special Issue Number 2.
22 Neither side has what we call the burden of proof or
23 responsibility of going forth with the evidence on Special
24 Issue Number 2.

25 You will not be receiving from me a definition of

1 what mitigating evidence is. United States Supreme Court has
2 said that you use the common ordinary understanding that the
3 words mitigating evidence has in common ordinary
4 conversation. Mitigating mean lessening if you will.
5 Therefore mitigating evidence is whatever, gentlemen, you
6 decide it to be. Kind of like what is beauty. Well, beauty
7 is in the eye of the beholder. To some people a painting is
8 beautiful. Others think, oh, that's awful, I can't stand
9 that. Well, who am I to say that either one of them is
10 correct or incorrect? It's whatever you individually
11 perceive it to be. Same way somewhat with this.

12 In the past individuals have told us that they
13 would, if evidence was presented, consider a learning
14 disability, being born as a crack baby, fetal alcohol
15 syndrome born child, various and sundry forms of sexual abuse
16 as a child could be under certain circumstances considered as
17 mitigation. The United States Supreme Court though has given
18 us very clear guidance that to be a qualified prospective
19 juror in a capital case, jurors must tell us that they would
20 be willing to listen to mitigating evidence, regardless of
21 the source from which it is derived, and after carefully
22 evaluating it, decide if as a result of that mitigating
23 evidence does that evidence rise to the level in their mind
24 as a result of which the defendant, in this case Mr. Murphy,
25 should live and not die. Because, gentlemen, if you

1 answer -- you, second person, plural -- the jury answers
2 Special Issue Number 1 yes and answer Special Issue Number 2
3 no, by law the jury is requiring me in this case to sentence
4 the defendant to death. That's the effect of those answers.
5 Got no secrets. We're not hiding any cards under the table.
6 This is not any kind of a con game. Everything is out in the
7 open. No secrets. A yes to Number 1, a no to Number 2,
8 equals death sentence.

9 Gentlemen, are each of you of a mind that can tell
10 us that you're willing with regard to Special Issue Number 2
11 to evaluate mitigating evidence, if presented, and then
12 determine whether or not as a result of which this case Mr.
13 Murphy should live and not die? Are both of you willing to
14 do that?

15 VENIREPERSON: Yes.

16 VENIREPERSON: Yes.

17 THE COURT: The Court sees both of the
18 prospective jurors nodding their heads in the affirmative.

19 Gentlemen, let me introduce those of you -- those
20 whom I have previously introduced whom you see seated at the
21 counsel table. We'll begin with the counsel table nearer to
22 you. Beginning first with lead counsel for the State from
23 the Dallas District Attorneys Office, senior prosecutor, the
24 Honorable Greg Davis.

25 MR. DAVIS: Good afternoon.

1 VENIREPERSON: Hi.

2 THE COURT: Seated next to him is co-counsel.

3 At the present time she occupies the position of Chief
4 Prosecutor in this the 194th District Court, the Honorable
5 Mary Miller.

6 MS. MILLER: Good afternoon.

7 VENIREPERSON: Good afternoon.

8 THE COURT: Moving on to the next counsel
9 table, there are three attorneys that represent the
10 defendant. First, lead counsel, a former Chief Prosecutor in
11 the Dallas District Attorneys Office, board certified
12 criminal law specialist, the Honorable Jane Little.

13 MS. LITTLE: Hi.

14 VENIREPERSON: Hi.

15 THE COURT: Seated next to Ms. Little is one
16 of her co-counsel, again, a board certified criminal law
17 specialist, the State Bar of Texas, the Honorable Mike Byck.

18 MR. BYCK: Good afternoon.

19 THE COURT: Seated behind Mr. Byck is the
20 third attorney representing Mr. Murphy, the Honorable
21 Jennifer Balido.

22 MS. BALIDO: How are y'all?

23 THE COURT: Seated next to Mr. Byck in the red
24 tie, blue shirt, the defendant, Jedidiah Isaac Murphy.

25 THE DEFENDANT: Good afternoon.

1 VENIREPERSON: Hi.

2 VENIREPERSON: Hello.

3 THE COURT: Gentlemen, the attorneys will be
4 asking you some questions individually. At the outset they
5 and I wish to assure each of you that to their questions
6 there are no right or wrong answers so long as they are
7 truthful. We don't grade individuals with regard to their
8 answers on some sort of a citizenship scale, if you will, as
9 to whether or not -- depending upon their feelings about the
10 death penalty. We don't do that at all.

11 Only because Mr. Cannon has the lower number, we
12 will begin with Mr. Cannon.

13 Mr. Griffing, I'm going to ask that you be excused
14 back into the Central Jury Room with the bailiff, Ms. Madore.

15 Mr. Cannon, can I invite you for the benefit of the
16 attorneys to have a seat in the jury or the witness stand
17 right here. The bailiffs will move the special issue board
18 over to your left for easier reference.

19 Okay. Mr. Griffing, I want when you return -- Mr.
20 Cannon, right now, I want to tell you to relax. Be as
21 comfortable as you possibly can be. I hope you haven't lost
22 a whole lot of rest and sleep in coming down.

23 VENIREPERSON: Yes.

24 THE COURT: You will be treated to some of the
25 best lawyers. We'll begin with Mr. Davis. Mr. Greg Davis,

1 Mr. Marlin Cannon.

2 MARLIN CANNON

3 was called as a venireperson by the Court and, after having
4 been first duly sworn, testified as follows:

5 Voir Dire Examination

6 By Mr. Davis:

7 Q. And, Mr. Cannon, again, how are you?

8 A. Okay.

9 Q. Good. As the Judge told you, I'm Greg Davis. Along
10 with Mary Miller, I represent the State of Texas in this
11 case. The way this is going to work is I'm going to have 30
12 minutes to speak to you this afternoon. After that, Mr. Byck
13 or one of the other attorneys will have a chance to speak to
14 you for 30 minutes also. And Judge Entz is right. There are
15 no right or wrong answers to these questions. We find that
16 most of the questions I'm going to ask this afternoon really
17 deal with how you feel about something or what your opinion
18 is. And I've talked to a number of people over the years and
19 so I understand everybody feels differently. As long as we
20 know how you honestly feel, that's all we need. All right?

21 I'm just curious before we get into some of these
22 other -- Naples, where is --

23 A. Morrow County. It's east of here about, oh, 140
24 miles.

25 Q. Is it out near Lufkin or Longview?

1 THE COURT: North.

2 MR. DAVIS: North. Okay.

3 A. It's -- I would believe it would be what, east of
4 Dallas. No, it's not near.

5 Q. Okay. All right. What we'll be doing this
6 afternoon, Mr. Cannon, is we'll talk about your questionnaire
7 a little bit. We'll talk about the death penalty in a little
8 more detail. And then we'll talk about some general
9 principles that apply in this case. But before we begin, I'd
10 like to go back to that day in the Central Jury Room.
11 Remember when that large group was gathered and Judge Entz
12 introduced everybody, told you why we were here?

13 Do you remember what your reaction was when the
14 Judge introduced Mr. Murphy to you and told you that we were
15 trying to seek the death penalty against him?

16 A. Do I remember my reaction?

17 Q. Yes, sir. What did you think when you learned that
18 we were seeking the death penalty against this individual
19 right over here?

20 A. Well, I looked at him and -- by looking at him, I
21 just assume that he doesn't look like a person that could do
22 that, but you really can't look at someone and tell --

23 Q. Uh-huh.

24 A. -- as to the type of individual they are.

25 Q. Right.

1 A. And shocked.

2 Q. Shock being called down to that kind of case, I
3 suppose?

4 A. Yes.

5 Q. You've had a little bit of time to think about the
6 proceedings, I suppose, and what I like to ask jurors is
7 this. Because I understand over the last two or three weeks,
8 you know, you may have had some feelings about serving on
9 this type of jury. The Judge has told you very accurately
10 what our position is, and it will not change in this case.
11 The State is actively seeking the death penalty against
12 Jedidiah Murphy. We're not going to change that stance.
13 When we get down to punishment, I will stand before you and I
14 am going to ask you to answer those questions in such a way
15 that Judge Entz will be required by law to impose a sentence
16 of death. That will occur.

17 And, you know, I know a lot of people in the past
18 when I talked with them, you know, they say it's one thing
19 when I answer these questionnaires. It's kind of in the
20 abstract. I honestly do believe in the death penalty. I
21 think it's necessary. It serves a function. I'm all for
22 it. I've had people when they come down here face to face
23 with it, if you will, express a little reservation in taking
24 part in it personally. Mr. Murphy is not abstract. He's a
25 living, breathing human being. There will come a day in

1 Huntsville, Texas, when he's going to lie dead on a gurney
2 because of the verdict in this case.

3 So if you could tell me honestly, how do you feel
4 about serving on this case when you know that the State is
5 seeking that?

6 A. I have no problem participating.

7 Q. Let me take that. If we prove this man's guilty
8 beyond a reasonable doubt, if we meet our burden of proof
9 then, you can find him guilty, correct?

10 A. Yes.

11 Q. And if the evidence is such in this case that you
12 honestly believe that Special Issues 1 and 2 should be
13 answered yes and no, even though that's going to result in
14 the death sentence, you can do that also, right?

15 A. Yes. Yes.

16 Q. In general, Mr. Cannon, are you the kind of person
17 who likes to hear all the facts before you make up your mind
18 about something?

19 A. Yes.

20 Q. All right. That's very important in this case?

21 A. Yes.

22 Q. Obviously this is a very serious matter. Obviously
23 everyone included, including the State of Texas, wants to
24 make sure that Jedidiah Murphy receives a fair trial. Having
25 gone through a number of these, it's very important I think

1 that we all be able to leave this courtroom on that last day
2 knowing it was a fair proceeding. All the rules were
3 followed. All of his legal rights were protected. And that
4 we don't have to second guess anything that happened.

5 Do you agree that that would be an important thing?

6 A. Right. Yes.

7 Q. I know that on your questionnaire you indicated a
8 couple of things. You were a little bit concerned, and I
9 know I've had some other answers very similar to this, you
10 were a little bit concerned about maybe the disparity between
11 the rich and the poor when it comes to criminal matters.
12 Would that be fair?

13 A. Yes.

14 Q. All right. That I think you said money buys the
15 best defense and it may well do that. The three attorneys
16 representing Mr. Murphy work for the Public Defenders
17 Office.

18 A. Uh-huh.

19 Q. And you've heard that they are very qualified. They
20 are very experienced. They're board certified in fact which
21 is a specialty that they've chosen to attain so obviously he
22 has very, very capable counsel.

23 A. I can believe that, yes.

24 Q. Do you think knowing the qualifications of these
25 individuals that you'd have any concern about the quality of

1 representation that he's going to receive in this type of
2 trial?

3 A. Well, can I elaborate on that?

4 Q. Sure, please.

5 A. I do believe that they would be qualified to
6 represent him. I think what a difference come in with the
7 money and the person say with more money, they are able to
8 maybe extend the trial longer.

9 Q. Uh-huh.

10 A. And -- but I do think they are probably -- and I
11 know they probably are qualified because I do have a relative
12 that is an attorney.

13 Q. Uh-huh.

14 A. And he does that, also.

15 Q. What type of --

16 A. And I have a lot of confidence in him.

17 Q. And the public defender is just a little bit
18 different than a private law firm. They have investigators
19 on the staff.

20 A. Yes.

21 Q. They have some of the same staff we have, so it's
22 not a situation where you might envision there are two or
23 three court-appointed lawyers and they don't have much to
24 work with.

25 A. Right.

1 Q. Do you understand this situation is a little bit
2 different?

3 A. Yes.

4 Q. You indicated your brother is an attorney?

5 A. Yes.

6 Q. Where does he practice?

7 A. In California.

8 Q. In California. Does he do criminal work?

9 A. He's a federal --

10 Q. Is he a federal public defender?

11 A. Yes.

12 Q. How long has he been a public defender?

13 A. Oh, about a year, year and a half. He did private
14 practice before that.

15 Q. Okay. And I take it then he'll handle a wide
16 variety of criminal cases; is that right?

17 A. Yes.

18 Q. Do you get a chance to talk with your brother about
19 his career, what he's doing in California?

20 A. Not really. I think in the last three months we
21 had -- my father passed in January, so we were together for
22 that, for about a month. But his practice and what did he
23 was not discussed because of the other circumstances.

24 Q. Right.

25 A. So not at all, not at all.

1 Q. I think that you said that you had one daughter who
2 is a probation officer; is that right?

3 A. Yes.

4 Q. Where is she a probation officer?

5 A. Here in Dallas County. Her office is, you know, in
6 the southeast area, south -- South Dallas area, somewhere
7 over in there.

8 Q. So she's going to be in one of the satellite offices
9 then?

10 A. Yes.

11 Q. How long has she been a probation officer?

12 A. About three years.

13 Q. Do you talk with her about her work?

14 A. No.

15 Q. About any of her clientele, any case load, anything
16 like that?

17 A. No.

18 Q. And I guess kind of balance everything. You've got
19 a daughter that is a police officer, too?

20 A. Yes.

21 Q. Is she a Dallas Police Officer?

22 A. Yes.

23 Q. Is she a patrol officer?

24 A. Yes.

25 Q. And do you know which division?

1 A. Southwest.

2 Q. Southwest. How long has she been with the Dallas
3 Police Department?

4 A. About six years, six or seven years.

5 Q. And again, you keep up with what she's doing?

6 A. Kind of, yes.

7 Q. Kind of parent/child --

8 A. Yes. I have a grandchild -- so she has a son, so I
9 keep him quite a bit, so --

10 Q. Okay.

11 A. So I see her quite a bit.

12 Q. Let's talk for just a minute about these special
13 issues?

14 A. Okay.

15 Q. And I think that you indicated that you generally
16 understand them. You understand what the burden of proof is?

17 A. Yes.

18 Q. And so you sound like you can follow the law. When
19 you look at Special Issue Number 1, Mr. Cannon, if you kind
20 of had your druthers, what would you like to know about --
21 what do you think might be helpful to you in actually
22 answering Special Issue Number 1? What sorts of things would
23 you like to hear about?

24 A. Well, actually why the act was really committed, you
25 know -- I would like to know the circumstances.

1 Q. Uh-huh.

2 A. Okay. I guess it would come out why this happened.
3 And then I guess then to Number 2, you know, if there
4 possibly was something in that background --

5 Q. Uh-huh.

6 A. -- that prompted that.

7 Q. Let me tell you on Special Issue Number 1 the law
8 says you can certainly consider the murder itself, why was it
9 committed --

10 A. Yeah.

11 Q. -- who's the victim, what are the circumstances, was
12 it a brutal killing, was it very spontaneous, does it appear
13 to have been planned out, motive. You get to look at all of
14 those things --

15 A. Okay.

16 Q. -- to determine Special Issue Number 1. A lot of
17 people tell me, too, that in answering Number 1, they'd like
18 to know about the person's background, has he ever been in
19 trouble before. So you might have a person that's never been
20 in trouble before. He's lived a tremendous life, been an
21 asset to the community, and for whatever reason commits a
22 capital murder. That can happen. You can see where you
23 might have someone else who's been in trouble or a long time,
24 picked up a number of cases, maybe he's even been through the
25 criminal justice system, maybe there have been efforts to

1 rehabilitate him already that he hasn't taken advantages of.
2 You get to take all of those things into account, if you
3 wish, in answering Number 1.

4 Do you think that all of those things would be
5 helpful to you?

6 A. Yes.

7 Q. Let's look at a couple of these words in Special
8 Issue Number 1 because they don't have legal definitions.
9 They are going to be left up to you. The word
10 "probability." You see, the legislature, when they gave us
11 this question, they said whether there's a probability that
12 the defendant would commit criminal acts of violence in the
13 future. Not whether there is a certainty. We don't have to
14 prove that, because a certainty he's going to do that in the
15 future. We have to do more than there's just a mere chance
16 or mere possibility. So the legislature kind of came down in
17 the middle there.

18 Do you see that? Do you see that the State does not
19 have to prove that there's a certainty that this person is
20 going to go off --

21 A. Yes.

22 Q. -- in the future and commit criminal acts?

23 A. Yes.

24 Q. Criminal acts of violence. The other thing is the
25 legislature could have forced the State to prove that this

1 man is going to commit future murders or capital murders. We
2 don't have to prove that. All we have to prove is that there
3 is a probability that he would commit criminal acts of
4 violence in the future.

5 And thirdly, the word "society." When you think of
6 society and who makes up society, Mr. Cannon, who comes to
7 mind?

8 A. Who comes to mind in society?

9 Q. Yes, sir. Uh-huh.

10 A. Men, women, children.

11 Q. All right. Is there anybody that you would leave
12 out of that?

13 A. No.

14 Q. All right. The reason I ask is because society with
15 regards to Issue Number 1, a lot of people will tell me,
16 well, obviously people like you and I that I'm going to say
17 live in the free world if you will. But in context to Number
18 1, can you see how that might also include people inside of a
19 prison? The Judge has told that you a life sentence equates
20 to 40 years for instance. Can you see that people serving
21 other felony sentences, guards, nurses, secretaries, that
22 those people also might be a part of society and they might
23 also be deserving of protection from crimes of violence, too.

24 A. Yes.

25 Q. Now, I've heard it argued a couple of ways on

1 society. I've heard it argued that jurors should not
2 consider the free world to be part of society on Question
3 Number 1, unless the State actually proves to you that that
4 person would be in the free world at some time or have access
5 to the free world, that somehow you ought to just kind of lop
6 off that and just look at prison as being society. That's
7 not the way that the law looks at it. I think the way the
8 law looks at that is this, that you consider society to be
9 anywhere that the defendant might find himself to be as being
10 society. And so you have the freedom to consider the free
11 world as well as the prison without regards to what the State
12 is proving about where he's going to be.

13 Does that seem fair to you?

14 A. Yes.

15 Q. Okay. Any questions on Special Issue Number 1
16 before we go down to the next one, Mr. Cannon?

17 A. No.

18 Q. Special Issue Number 2. Like the Judge said, it's
19 kind of like a safety net because by the time you get down to
20 Special Issue Number 2, you're well on your way to a death
21 sentence. You've already found the defendant guilty. You've
22 already determined he's going to be a future danger to
23 society. And now you've got to go down to Special Issue
24 Number 2. If you answer it no, this man is going to get
25 death. If you answer it yes, he gets life.

1 Now, I have had people in the past tell me if I find
2 someone has intentionally killed someone during a robbery or
3 kidnapping, such as in this case, and if I truly believe he's
4 a future threat to society, that pretty much does it for me.
5 I'm going to answer it no to make sure he gets death. I've
6 had people say that. I've had other people say I'm kind of
7 ambivalent of the death penalty so regardless of what I've
8 done in the past, I'm going to always answer that yes to make
9 sure he gets life.

10 How do you honestly look at Special Issue Number 2
11 when you get down there?

12 A. Relative to committing the crime of murder, I would
13 be kind of weak on that as far as taking that under
14 consideration.

15 Q. Okay.

16 A. If he does a hideous crime like that.

17 Q. And again, I don't want to put words in your mouth,
18 I hear you saying this --

19 A. In other words, I wouldn't put too much emphasis on
20 it.

21 Q. All right. I take it that you would be leaning
22 towards a no if you found that he's committed a hideous crime
23 and he's truly going to be a threat in the future that you're
24 likely to go with a no; is that correct?

25 A. No as --

1 Q. As a death -- you'd be more likely to answer that so
2 he would get death? Is that what you're saying to me?

3 A. Yes.

4 Q. Okay.

5 A. But I would listen.

6 Q. Right. Are there any things that come to mind when
7 you think about mitigation? Are there any items that come to
8 mind where you say, you know, that's the kind of thing that I
9 might think of as mitigating? Anything that really comes to
10 mind?

11 A. Self-defense.

12 Q. Okay. Let me tell you, if it was self-defense --

13 A. Then we wouldn't be here.

14 Q. Right. He would be found not guilty. That's a
15 defense to the crime.

16 Let me go through a few of the things -- some the
17 Judge has gone over previously that I've heard people express
18 in the pass and kind of get your feelings about it. I've had
19 some people tell me if the defendant is relatively young,
20 that might be mitigation. I've had other people tell me,
21 that doesn't matter to me. As long as that man is old enough
22 to be accountable as an adult, know what he's doing, that
23 pretty much answers it for me.

24 How do you feel about age?

25 A. Age, I think if they've done the crime, they know

1 what they're doing.

2 Q. Some people have expressed some concerns about maybe
3 alcohol use or drugs.

4 A. No.

5 Q. Okay. And I took that from your answer that you
6 basically said that's your choice, right?

7 A. Yes.

8 Q. If you do the drugs and do you the alcohol and you
9 commit a crime, that's too bad?

10 A. Right.

11 Q. Some people have -- well, they've talked about
12 things like mental illness. See, we have Special Issue
13 Number 2 because there was a defendant who was mentally
14 retarded so the court said, well, we want juries to at least
15 be free to think about that if they want to.

16 Just as a general question, have you ever known
17 anyone who's truly suffered from a mental illness, maybe
18 friend of the family, coworker, anything like that? That you
19 can think of?

20 A. Well, would you call a nervous breakdown or
21 something like that as mental?

22 Q. Okay. Yeah, that could be.

23 A. Well, yes.

24 Q. All right. Do you think that there are some people
25 who might be capable of faking a mental illness to gain an

1 advantage? Particularly let's say hypothetically a person is
2 facing a possible death sentence or other criminal
3 punishments, do you think there might be some people that are
4 motivated to maybe exaggerate their condition to avoid
5 responsibility for their actions?

6 A. Well, I don't know of anyone that -- with a mental
7 condition that I think would -- well, I don't know of
8 anyone -- I don't know anyone that I -- that would fake a
9 mental, but I do think that there are people that could fake
10 it.

11 Q. Uh-huh, okay. When it comes down to something like
12 mental illness, would it be fair to say you'd want to know as
13 much about that issue as you could --

14 A. Yes.

15 Q. -- before you decide whether it's viable or not?

16 A. Most definitely.

17 Q. In cases like this there may be claims of sexual
18 abuse or physical abuse. Maybe someone comes in here and
19 claims that as a young child they were abused in some way.
20 Again, have you ever known anybody who's made that kind of
21 claim?

22 A. Sexual abuse?

23 Q. Yes.

24 A. Yes.

25 Q. Okay. Was that somebody in your family or friend

1 or --

2 A. A friend, yes.

3 Q. Okay. Did you ever make any judgment about whether
4 that had actually occurred to them or not?

5 A. No. Because -- when the statement was made I
6 went -- it's been discussed. On something like that, I feel
7 you have to be very careful on your first statement you say
8 to this person.

9 Q. Uh-huh.

10 A. Because if they came to you with that information,
11 you have to be careful. Really, really think about it before
12 you make a judgment because the first thing you say could
13 have an effect on that person --

14 Q. Right.

15 A. -- as to the way they feel about you and the other
16 person that it happened -- that did the crime.

17 Q. In a case like this, if you heard something like
18 that, again, would it be important to know as much about that
19 as possible before you determine whether it's believable or
20 not to you?

21 A. I don't know if I would want to know -- if
22 someone -- I don't know. I don't know.

23 Q. Well, for instance, just in general if somebody were
24 making a claim like that --

25 A. Okay. Okay.

1 Q. -- would it be important to you to know just how
2 quickly did they make the claim, did they make it
3 immediately --

4 A. Okay. Yes.

5 Q. -- or did they wait years before that's popped up?

6 A. Yeah.

7 Q. Okay. Would you like to know what the circumstances
8 were maybe when they made the claim, was there some reason
9 for them to make the claim? Maybe they were under a criminal
10 indictment or maybe they were looking at some pen time or
11 something before they started making those kind of claims?

12 A. Yeah, I would want to know that.

13 Q. Some people have told me on Special Issue Number 2
14 that they might want to look at whether that person is really
15 remorseful. Are they really sorry for what they did? I've
16 had some people tell me that's just too bad, you know, once a
17 crime is done, I don't want to care.

18 How do you feel about that?

19 A. I would take that into consideration, yes.

20 Q. For instance, you know, you could have a situation
21 where a person commits a murder, stays at the scene, maybe
22 they're sorry immediately, they call the police themselves,
23 they wait at the scene, they talk to the police, they fully
24 cooperate with them, police officer comes in and says when I
25 got to the scene, the man was crying and very remorseful and

1 sorry -- I mean, you could have that, or you could have just
2 the opposite where the man shows no remorse at all. I mean,
3 shows no emotion maybe until he gets arrested later, or maybe
4 until he's in jail. You see how that could vary there?

5 A. Yes.

6 Q. What are your feelings about all that?

7 A. I could think -- I would think that maybe -- I would
8 really have to look at the situation because the person could
9 say, okay, I've done this crime. I better fake sorrow.

10 Q. Uh-huh.

11 A. And I would really have to look at the evidence and
12 see, you know.

13 Q. All right.

14 A. So they might say I've done this crime and right
15 away start thinking, okay, if I show some sympathy, maybe --
16 I wouldn't let them off simply because they show sympathy or
17 show some remorse.

18 Q. Just in general in a case like this where an
19 individual is facing either a life or death sentence, how
20 would you expect that person to act while they're confined in
21 the county jail awaiting trial? Would you expect them to be
22 on their best behavior, or would you expect them to be --

23 A. Yes.

24 Q. -- raising Cain everyday up there?

25 A. Sure, if they -- sure.

1 Q. Before we leave and go to something else, Mr.
2 Cannon, do you have any questions there about Special Issue
3 Number 2, or do you feel like you understand what's going to
4 be expected of you?

5 A. I understand.

6 Q. Let's talk for a minute about burden of proof. You
7 know, the Judge has told you our burden of proof is proving
8 this man's guilty beyond a reasonable doubt. That's a high
9 standard.

10 A. Yeah.

11 Q. It's not beyond a shadow of a doubt or beyond all
12 doubt. I guess you can understand the only way to get to
13 that point probably is if you were actually a witness to it
14 and you see it yourself. And there's a lot of ways the State
15 can prove a case. There might be eyewitness testimony
16 sometimes, but not always. You can see where an individual
17 committing a murder such as this one might do it where no
18 one -- no one is present. He may have wanted to conceal his
19 identity in some way. So there are instances where the State
20 has to rely on circumstantial evidence in one form or
21 another.

22 What's your general feeling about the reliability of
23 circumstantial evidence in a case like this?

24 A. I think it can be -- I would consider it.

25 Q. Okay. You know, it can take a lot of different

1 forms.

2 A. Uh-huh.

3 Q. It could be something like fingerprint evidence --

4 A. Would that be circumstantial?

5 Q. That could be circumstantial evidence, yes. Uh-huh.

6 When I say circumstantial, I'm saying anything but eyewitness
7 testimony.

8 A. Oh, okay.

9 Q. So fingerprints could be circumstantial evidence.
10 Blood evidence may be circumstantial. DNA evidence may be
11 circumstantial.

12 What are your feelings about just those types of
13 evidence? You think they could be reliable?

14 A. Yes.

15 Q. Okay. It could just be a circumstance.

16 A. Okay.

17 Q. Let's say you're coming home from work one day and
18 you see me walking out of your door, running out of your
19 front door and I'm carrying your TV under my arm and I'm
20 running. You didn't see me go in. You didn't see me pick
21 your TV up, but the circumstances are pretty clear I'm in
22 possession of your goods and I'm running away so that could
23 be a circumstance of guilt, also.

24 You could also have a written statement. Let's say
25 that no one saw me take your TV, but I come in later to the

1 police and I give them a written statement about what
2 happened. And I actually confess to that.

3 Do you see how that could also be circumstantial
4 evidence there?

5 A. Uh-huh.

6 Q. Have you -- let me just kind of go through a couple
7 of things here. Have you ever known anyone who has used
8 illegal drugs such as marijuana, cocaine, or LSD?

9 A. Yes.

10 Q. Okay. Do you have any knowledge about how any of
11 those drugs could affect a human's mind? How it might have a
12 long-term effect on them?

13 A. I have my -- yes, I -- I have my opinion, and I seen
14 how it does affect a person, each one of them.

15 Q. How has it affected them?

16 A. Deteriorated the person totally, you know, to the
17 point where -- they were just not -- they were just
18 functionally out of it.

19 Q. And again, I guess did you believe that was kind of
20 one of those choices that they had made --

21 A. I do believe it was, because, you know, I've been in
22 that situation where something could have been done about it
23 to help them.

24 Q. Right. When you -- you know, when you look at this
25 case -- and I know your mother is, what, 76; is that right?

1 A. Yes.

2 Q. Okay. One question that we sometimes ask in this
3 case is: Do you still feel that you could be fair to both
4 sides if it developed that the victim in this case was 80
5 years old, that Bertie Cunningham, the woman who was
6 murdered, was 80 years old? Do you think that would affect
7 you -- your ability to be fair, or do you think you could
8 look at that and still be fair to both sides?

9 A. I could. I could.

10 Q. You know, that indictment that's up there in front
11 of you really tells you what we have to prove in this case.
12 One thing I want to talk to you very briefly is this: In
13 this case we have to prove that this defendant intentionally
14 took the life of Bertie Cunningham, that he did so during the
15 course of either robbing her or kidnapping her. You know, we
16 may prove that both of them happened, but we just have to
17 prove that one of them happened. Then we have the option,
18 two, of showing that he either shot her with a pistol to
19 cause her death or that he drowned her in water to cause her
20 death. That's what we have to prove in this case. If we
21 prove those things to you beyond a reasonable doubt, then we
22 are entitled to a guilty verdict. If we fail, hey, that's
23 it.

24 And let me just tell you I'm not looking for someone
25 to help me with the burden of proof. I want somebody that

1 makes me meet that burden of proof. Don't make it easy.
2 Make we prove what's in that indictment. I drafted it, so I
3 know exactly what's in there, what I've got to prove.

4 Do you feel like you're the kind of person that
5 could do that?

6 A. Yes.

7 Q. Let me just conclude here, and I'm just going to ask
8 you kind of a broad question here. If you were seated over
9 here in my chair, Mr. Cannon, and you represented the State
10 and you represented the victims in this crime, do you feel
11 like you're the kind of person that you would want to sit on
12 this jury?

13 A. Yes.

14 Q. Okay. Same thing, if you were over here on this
15 table and you're representing the defendant, do you think
16 that you're the kind of person that will give this man a fair
17 trial, make the State prove their case before you give
18 that -- those answers?

19 A. I think that I could be fair.

20 Q. Is there anything that we've gone over that's raised
21 some questions in your mind or maybe that I've muddled the
22 waters in some way or --

23 A. No.

24 Q. Anything that you want to ask me, Mr. Cannon?

25 A. No.

1 Q. Sir, I appreciate your time. More importantly, I
2 appreciate your candor because we really do depend upon that.
3 Thank you.

4 THE COURT: Before we continue, Mr. Cannon,
5 with the questions by Mr. Byck on behalf of Mr. Murphy, do
6 you want to take a stretch break, go to the men's room?

7 VENIREPERSON: No, I'm fine.

8 THE COURT: Ready to continue?

9 VENIREPERSON: Yes.

10 THE COURT: Let me reintroduce on behalf of
11 the accused, the Honorable Michael Byck.

12 MR. BYCK: Thank you, Your Honor.

13 Cross-Examination

14 By Mr. Byck:

15 Q. Again, Mr. Cannon, I'm Mike Byck. And together with
16 my co-counsel, Jane Little, seated to my immediate right, and
17 Ms. Jennifer Balido, seated behind me, we represent Mr.
18 Jedidiah Murphy in this the trial for his very life. I
19 appreciate the serious and honest answers I believe you gave
20 Mr. Davis and the District Attorneys Office. I certainly
21 hope that you will do the same with me because as Mr. Davis
22 said, there aren't any right or wrong answers. This is not a
23 civics test or a citizenship test. I'm going to ask you some
24 questions probably fairly similar to the questions that Mr.
25 Davis asked you. I want you to understand, sir, that what

1 we're looking for are your feelings or your ideas. Neither
2 Mr. Davis nor myself are going to be on this jury. We've got
3 our own ideas. We've honed them over the years, and we've
4 got them down pat. But our ideas really are not important.
5 It's your ideas that are important. So if you'll just answer
6 me honestly. And if I mumble or confuse you, which I'm prone
7 to do, just say wait a minute, Mike, let's start over again,
8 would you mind explaining that. Okay?

9 A. Sure.

10 Q. Okay. Mr. Davis (sic), you understand we're talking
11 about capital murder. Capital murder is murder plus.

12 A. Cannon. No problem.

13 Q. Oh, I'm sorry. Mr. Cannon. He's Mr. Davis. I'll
14 get them straight one of these days.

15 Mr. Cannon, you understand that capital murder is
16 murder plus? If, for example, I were to --

17 A. Murder plus.

18 Q. -- pull out a pistol and kill -- sir?

19 A. Murder plus?

20 Q. Murder plus. I'm going to tell you about the plus
21 right now.

22 A. Okay.

23 Q. If I were, for example, to reach into my pocket and
24 pull out my pistol and kill my co-counsel here -- no, that's
25 not good enough. Let's say I get up and yell at her, swear

1 at her, and shoot her 10, 12 times in the head. That's
2 pretty bad. That's murder. That's not capital murder. I'm
3 not eligible for the death penalty if do that. The State of
4 Texas says that in order to be eligible for the death
5 penalty, it has to be murder plus. Murder plus robbery,
6 murder plus rape, murder plus arson, murder plus burglary, or
7 murder of a special kind of person, a child, a prison guard,
8 a police officer, or fireman, all in the line of their duty.
9 Or other special kind of murders, serial murders where I
10 don't like women attorneys, okay, so I kill my co-counsel
11 today and I'll take a shot at Mrs. Balido next week sometime
12 and then I'll be out to visit Mrs. Miller later on in the
13 month. If I kill all those people, that's a serial murderer,
14 a mass murderer, or if I kill them all at the same time. For
15 those offenses and for only those offenses I would be
16 eligible for the death penalty.

17 Now, there are all different kinds of murder. I'm
18 sure you know most of them. Some of them in terms that you
19 wouldn't ordinarily use, but you're still familiar with the
20 murder. I'm driving down the street drunk. I don't know
21 you're on the street and I run into you. That's a murder.
22 It's a kind of murder called negligent homicide or
23 manslaughter. Right? It's still a murder. I've still taken
24 your life. I just did it with the mental element of
25 recklessness -- recklessness or negligence. I just wasn't

1 really thinking of what I was doing. Okay. There are other
2 kinds of murders. I see you in a group of people and I don't
3 like you, so I whip out my AK 47 and I open fire on all of
4 you and you're a little luckier than most, you got behind a
5 light pole or something. I didn't hit you. But I did hit
6 somebody else, and I killed them. That too is a murder.
7 That is what is known as a knowing murder. That's where I
8 did an act clearly dangerous to human life, taking a shot at
9 all of you people, trying to kill you and killing somebody
10 else.

11 Those kind of murders that I described are not
12 capital murders. The reason why is because of the mental
13 element, or what we call the intent. In a capital murder I
14 have to have very specific intent to kill. Let's go back to
15 me and my co-counsel Ms. Little. I go out and I buy a gun.
16 I buy some bullets. I load the gun. I sneak the gun past
17 the security guards downstairs. No great feat, but I do it
18 anyway. And I come up here. And Ms. Little is writing me a
19 note, and I'm -- I've had it with her notes. I've just had
20 it with them. And I pull out my gun. She sees the gun. At
21 that point I do not intend to frighten Ms. Little by her
22 seeing the gun. I aim the gun at her and fire it. At that
23 point I do not intend to wound Ms. Little. I intend to kill
24 her. That is my intent. It is my conscience objective and
25 desire when I engage in the conduct, pulling the gun, aiming

1 it, cocking it, pulling the trigger, to cause the result.
2 Ms. Little is not frightened. She is not wounded. She is
3 dead. A very specific intent.

4 Are you with me so far?

5 A. Oh, yes.

6 Q. Okay. The intent is going to be very important
7 later. Well, it's important at that particular stage because
8 you can't find me guilty of capital murder without that very
9 specific intent.

10 Do you understand the requirement for this very
11 specific mental element in capital murder? You can't have an
12 accidental capital murder. You cannot have a mistaken
13 capital murder. You got to have a capital murder that is --
14 is contemplated and intended where every -- where what you do
15 is aimed at getting the result you want, which is death,
16 nothing else. Not robbing her, not insulting her, not
17 anything else but killing her. Okay. All right.

18 Now, let me be honest with you. Once you have found
19 an individual guilty of capital murder -- let's talk about
20 me. All right. You found me guilty of intentionally killing
21 Ms. Little, and I steal her -- her pad of paper while I'm at
22 it. That makes it -- since I have a gun, it makes it a
23 robbery. I am guilty of capital murder at that point.

24 Then we go on to the first question, whether there's
25 a probability I would commit criminal acts of violence that

1 would constitute a continuing threat to society. Well,
2 you've seen me here. You've watched me kill Ms. Little. You
3 know that I really don't have any remorse, that I really
4 don't care. That I'm really angry at Ms. Little, and I want
5 her dead. I did all those things, including sneaking a gun
6 into this courtroom, to kill her and, in fact, I killed her.
7 And you could decide just by listening to me talk that, boy,
8 this guy Byck is a menace. You know, you give -- you give
9 him another gun and he'll be killing other people for sheets
10 of notebook paper for crying out loud.

11 In my hypothetical trial, capital murder trial, you
12 have found me guilty of capital murder, an intentional
13 murder. You have also found through whatever evidence that
14 I'm going to be a continuing threat to society. I really
15 don't feel very bad about killing her at all. As a matter of
16 fact, I enjoyed it. I may want to do it again. After you've
17 reached that point, let me ask you something very seriously,
18 Mr. Cannon, and you give me an honest answer. Is there
19 anything, anything on this planet that I could show you in
20 mitigation of the intentional murder and the fact that you
21 believe beyond a reasonable doubt that I am going to be a
22 danger in the future? Is there anything, sir, that I could
23 show you to get you to answer Special Issue Number 2 yes --

24 A. Okay --

25 Q. -- where I get a life sentence?

1 A. Answer? No.

2 Q. There is nothing you would consider --

3 A. From the hypothetical situation you just gave me,
4 you came in, you intentionally shot her --

5 Q. Right.

6 A. -- you took her pad.

7 Q. Right. That's a murder and a robbery, so I'm guilty
8 of capital murder.

9 A. Yes.

10 Q. And then let's go on --

11 A. And then you want to know if there is anything in
12 Special Number 2 that would change my mind --

13 Q. No, remember --

14 A. -- as to whether you would be a threat to society?

15 Q. No, remember, we're doing this step by step. You've
16 found me guilty of capital murder. The first step after that
17 is you answer Special Issue Number 1.

18 A. Uh-huh.

19 Q. Whatever evidence there is, it's the State's burden
20 of proof to prove to you beyond a reasonable doubt that, yes,
21 I am going to probably commit criminal acts of violence that
22 would constitute a future threat to society.

23 A. Uh-huh.

24 Q. Same words. I mix them up different every time I
25 say them. They've proved to you that about me. They've

1 proved to you I'm an intentional murderer. They proved to
2 you I'm going to be a future danger.

3 Question Number 2 now --

4 A. Do I think there is anything in Number 2 that would
5 change my mind?

6 Q. Is there anything I can --

7 A. Is that your question?

8 Q. -- show you in Question Number 2 that would make you
9 change your mind?

10 A. I don't think so.

11 Q. That's a fair answer. There are, you understand,
12 all kinds of mitigating evidence. Mr. Davis went over a long
13 list of them. Some people may think they're aggravating.
14 Some people may think they're mitigating. I could bring you
15 my mommy who would cry and, you know, I could show you all
16 kinds of problems that I've had in my youth, and, you know,
17 maybe I've been drinking, maybe I've been using drugs. I'm
18 not very young. I'm not going to get away with that one, I'm
19 afraid. I'm a little crazy. I'll go for that. I love my
20 family. I was really good when the cops got me, gave them
21 the gun and all that, whatever, but that really doesn't
22 matter, does it, or it wouldn't to you?

23 A. In a hypothetical situation you just gave me? No.

24 THE COURT: Mr. Cannon, do I understand you to
25 say that regardless of the mitigating evidence presented, you

1 would not consider?

2 VENIREPERSON: Yes. Well, I don't think I
3 would really, given the situation that he gave me, that he
4 just came in, he intentionally went and got the gun, he
5 brought it, he sneaked it in, and he came in, he got angry,
6 he shot a woman, and he stole her pad. If I'm understanding
7 correctly, that's capital murder. Now --

8 THE COURT: It's capital murder.

9 VENIREPERSON: Yes.

10 THE COURT: It's capital murder, right. But
11 capital murder does not automatically under every case equal
12 death.

13 VENIREPERSON: Okay. Okay. So if there is
14 any --

15 THE COURT: That would guarantee a life
16 sentence period, would not automatically guarantee a death
17 sentence.

18 VENIREPERSON: Okay. Okay.

19 THE COURT: But if they answer Special Issue
20 Number 1 to your satisfaction, yeah, he's going to be a
21 future danger --

22 VENIREPERSON: Uh-huh.

23 THE COURT: -- Mr. Byck's question to you with
24 regard to Number 2, is there anything -- about to sneeze --
25 in the realm of evidence presented that you could consider to

1 be mitigating evidence such that he would get a life sentence
2 and not death?

3 VENIREPERSON: No.

4 THE COURT: Regardless?

5 VENIREPERSON: Regardless.

6 THE COURT: He's going to die.

7 Defense may continue.

8 MR. BYCK: May we approach at this point very
9 briefly?

10 (Side bar discussion.)

11 THE COURT: Let the record reflect an
12 unreported hearing occurred at the side of the bench, outside
13 the presence hearing of the reporter, the defendant, the
14 prospective juror.

15 The defense may continue.

16 Q. (By Mr. Byck) Mr. Cannon, I want to be sure and
17 state this to you fairly. And I think I have stated it to
18 you fairly.

19 The law requires -- well, before I say something
20 like the law requires or for you to be a qualified juror,
21 want you to understand something, and that is that the law
22 will never ever require you to surrender your deeply held
23 beliefs or violate your conscience or reject your strong
24 personal feelings.

25 A. Uh-huh.

1 Q. The law is just not going to require you to do
2 that. If you feel strongly, the law may say you may not be a
3 qualified juror, but is not going to jump on your back and
4 whip you with a stick and say you have got to do this in
5 spite of how you feel and how you believe and what your
6 conscience says. Okay. Hypothetically, you have found me
7 guilty of a capital murder. Hypothetically, you have found
8 that the State has carried their burden of proof on Special
9 Issue Number 1 and that you believe beyond a reasonable doubt
10 me to be a danger in the future. Okay.

11 In this hypothetical examination, like I said, I
12 have a lot of mitigating evidence. I told you about my mom.

13 A. Okay.

14 Q. I told you about how well I got along in jail and I
15 told you I'm a little bit crazy and I may have been using
16 drugs and alcohol, and whatever, but let me add a few other
17 things, too. I'm a really good artist. I'm not a bad
18 playwright, got a couple of plays. May or may not be
19 produced some day. If -- if in our hypothetical situation,
20 after having found me guilty and after seeing me beyond a
21 reasonable doubt to be a danger in the future, if you saw
22 some mitigating evidence that I presented to you and you were
23 really impressed with, you thought, well, this is pretty
24 impressive stuff here. I believe what I'm going to say is
25 that I think it's sufficient enough to warrant a life

1 sentence, or in all honesty is that just absolutely
2 impossible, absent from a signed letter from God that says
3 Mike really has some mitigating evidence that, you know,
4 ought to put him over the top here and that you are honor
5 bound to believe that you're my loyal servant. If I don't
6 have a letter that says that, and believe me, I'm never ever
7 going to get one that says something like that and nobody
8 else is either.

9 But if you find something that you feel is
10 mitigating, do you think you could say, yes, I believe that's
11 mitigating enough for me to give the answer of yes to Special
12 Issue Number 2, meaning I would not get a death sentence or
13 would you be compelled to say found him guilty of capital
14 murder, I found he's going to be dangerous in the future, he
15 does not have a letter from God, and I can never ever find
16 anything mitigating enough to answer Special Issue Number 2
17 yes?

18 A. Okay. I could answer yes, but now -- let me see if
19 I understand this now. Are you asking me if I could use
20 mitigating circumstances in Number 2 to determine if he gets
21 life or death? Is that your question?

22 Q. Yes, that's half of what I'm asking.

23 A. Okay.

24 Q. Can you do that after you have already found him
25 guilty and after you have already answered Special Issue

1 Number 1 to be yes?

2 A. Excuse me, you're asking me if I can still find
3 him -- can I still say death? Is that what you're asking?

4 Q. No. Can you say life?

5 A. Can I say life?

6 Q. After finding me guilty and after finding that I'm
7 going to be a future danger.

8 A. Death is not considered in this situation?

9 Q. Remember, it's the answers to the questions that
10 determine life or death?

11 A. Okay.

12 Q. If you answer Question Number 1 as --

13 A. Yes.

14 Q. If you answer -- find me guilty, answer Question
15 Number 1 yes --

16 A. Okay.

17 Q. -- and in your answer to Question Number 2 you find
18 that there is sufficient mitigating circumstances to warrant
19 a life sentence --

20 A. Okay.

21 Q. -- would you be able to give me a life sentence or
22 would you have to say I found him guilty, he's going to be a
23 future danger, I don't care what he shows me?

24 A. I would consider it.

25 Q. You would consider it?

1 A. I would consider it.

2 Q. So you would be able to do that?

3 A. Yes.

4 Q. If you found sufficient mitigating circumstances,
5 right?

6 A. Yes.

7 Q. I'm not asking you how high the bar is?

8 A. I would consider it, yes.

9 Q. Okay. That's all we can ask you to do.

10 A. I would consider it, yes.

11 Q. If -- let me take this one little step further. If
12 in the consideration of your mitigating circumstances, could
13 you ever find any mitigating circumstance or circumstances
14 sufficient to in the face of a guilty and a yes, he's going
15 to be a danger in the future, give me life?

16 A. That mitigating circumstances -- to give you life?

17 Q. Right.

18 A. This hypothetical situation here?

19 Q. Uh-huh.

20 A. I don't think so.

21 Q. Mr. Cannon, as you can see, I'm sure you can see --

22 A. Am I confuse -- am I not understanding?

23 Q. No, I think you are understanding it, I think you
24 are. But we're just checking with each other to make sure
25 that we're getting it to you in the most simple way and that

1 you understand the law because, believe me, I don't know if
2 I'm capable of confusing you, Mr. Cannon, but I am certainly
3 capable of confusing myself. Okay. All right. So that's
4 why we're trying to figure out --

5 A. Okay.

6 Q. -- if we've given you enough information because
7 there is no tricking you here, very frankly. If the Judge
8 thinks that I'm tricking you, believe me, you're going right
9 back to Mr. Davis and he's going to clean it up.

10 A. Okay. And I'm trying to understand.

11 Q. Right. Okay. You get a fair question, and then we
12 get a fair answer.

13 A. Okay.

14 Q. Okay. My co-counsel told me that I've succeeded in
15 confusing them, so let me run this by you one more time to
16 make sure that you understand.

17 A. Okay.

18 Q. You find me guilty of capital murder, an intentional
19 murder.

20 A. Okay.

21 Q. You find that the State has shouldered their burden
22 of proof and proved to you beyond a reasonable doubt that
23 there is a probability that I would commit criminal acts of
24 violence just like it says in that question.

25 A. Okay.

1 Q. Okay. Then we get to the second question.

2 A. Okay.

3 Q. After you have found me guilty and found the answer
4 to the first question, we get to the second question.

5 A. Okay.

6 Q. And you hear mitigating evidence.

7 A. Okay.

8 Q. Whatever it is.

9 A. Okay.

10 Q. Let's not even talk about what kind of mitigating
11 evidence it is.

12 A. Okay.

13 Q. But you hear mitigating evidence. You not only hear
14 this mitigating evidence, but this mitigating evidence is
15 very attractive to you. It makes sense to you. It raises to
16 the level where if you were not in a capital murder
17 situation, you might just find that, yes, there is sufficient
18 mitigating evidence that I should get a life sentence. But
19 however in the capital murder context, can you say to us,
20 yes, if I hear evidence, I'm going to consider it. If I
21 consider it and I rate it or I personally weigh this evidence
22 to be such that I really think the person ought to get a life
23 sentence instead of a death sentence, I'm going to give him a
24 life sentence. Or is your thought about that, listen, I
25 found him guilty of capital murder, I found that he's going

1 to be of future dangerousness, of course I will listen and
2 consider to hear mitigating evidence, but unless you bring me
3 a letter from God, all right, I'm not going for it. Anything
4 short of that, I am not going to go for it. Even though I
5 considered it, I liked it, I listened to it, whatever. We're
6 talking about a capital murder, and I'm not giving you a life
7 sentence after I found you guilty and you're going to be a
8 future danger. I just can't do that.

9 Where do you feel? Where do you fit in there?

10 A. Where do I fit in that situation there? Again, I
11 would listen, consider, weigh it, and I'd have to think about
12 it long and hard as to whether I would change from -- now, am
13 I talking about a death penalty here or just life in prison?

14 Q. You're talking either life or death.

15 A. Life or death.

16 Q. That's exactly right because the answer to that
17 question, Special Issue Number 2 --

18 A. I would consider it. I would consider it.

19 Q. If you considered it and you found that, yeah,
20 that's pretty good evidence, you know, I know he did it
21 intentionally and I know he's going to be a danger in the
22 future, but there is some evidence that raises to the level
23 of mitigation where I feel he ought to have a life sentence.
24 Can you write life down? In other words, can you answer --

25 A. I hear, I understand.

1 Q. Can you answer no --

2 THE COURT: Yes.

3 MR. BYCK: Yes.

4 Q. (By Mr. Byck) One or the other. You see what -- I
5 mean, we're getting ourselves confused now. But what I'm
6 saying is you found me guilty, Question Number 1 to be yes?

7 A. Right.

8 Q. You hear mitigating evidence. You consider it. You
9 listen to it.

10 A. Uh-huh.

11 Q. Not only that, you feel that it raises to the level
12 where I ought not to get a death sentence.

13 A. No.

14 Q. Is that ever going to happen?

15 A. Is that ever going to happen?

16 Q. Yes.

17 A. Possibly. Possibly. But you have to -- as far as
18 to say yes or no --

19 Q. I know that. Believe me, I know that. It's very
20 difficult.

21 A. But I would lean strongly towards the death penalty,
22 yes.

23 Q. One last question about Special Issue Number 2. The
24 law says that there is no burden of proof on Special Issue
25 Number 2. I don't have to prove that mitigation raises to a

1 certain level.

2 A. Uh-huh.

3 Q. I don't even have to bring any mitigating evidence.
4 The State could bring it. You know, the State could say --
5 well, let's see, what's a stupid piece of mitigating or
6 aggravating. He's got a beard, right?

7 A. A beer?

8 Q. A beard.

9 A. Oh, beard. Okay.

10 Q. So the State proves that I've got a beard, and some
11 people on the jury feel, well, people that have beards are
12 nice people, they're not bad. And other people on the jury
13 go, no, people with beards are bad people and they're always
14 bad. All right. The law says that in proving Special Issue
15 Number 2, no one has a burden of proof. They don't have to
16 prove it. We don't have to prove it. If it's there, you
17 listen to it and consider it.

18 Would you in the context of the capital murder,
19 again where you don't even get to Special Issue Number 2
20 until you've already found me guilty of intentional murder
21 and found that I'm going to be a future danger, would you
22 say, well, it's your burden to prove something to me,
23 defense, you better prove that mitigation to me, it's your
24 burden to show it to me.

25 A. No.

1 Q. You wouldn't do that?

2 A. No.

3 Q. Okay. All right. Let me --

4 MR. BYCK: What kind of time am I running
5 here, Judge?

6 THE COURT: You have three minutes left.

7 MR. BYCK: Oh, boy.

8 Q. (By Mr. Byck) Let me ask you a couple of real quick
9 questions. Okay? All right.

10 It is possible that an individual may confess to an
11 offense. A confession is a written statement against
12 interest saying that on a date certain I did such and such to
13 so and so in such and such a manner. You know what a
14 confession is. In order for a confession to be legal in
15 Texas, some things have to have happened. Number one, it
16 cannot be a coerced confession. That is, somebody can't sit
17 on my chest and beat my head against the floor until I
18 finally decide to sign a piece of paper. It has to be
19 uncoerced. That's number one.

20 Number two through five is that it's got to be
21 warned. An individual giving a written statement has to be
22 given the Miranda warnings. You've probably heard your
23 daughter reciting them, trying to memorize them. You've got
24 the right to remain silent. Anything you say can be held
25 against you. You have the right to have an attorney

1 appointed during this questioning. If you're too poor to
2 afford to have an attorney, we'll appoint one for you. You
3 have the right to terminate the questioning at any time. I
4 think that's four. I always get the numbers confused. Okay.

5 I'm going to give you a hard, hard case situation,
6 because believe me, I haven't cut you any slack that's for
7 sure. I've asked you some real hard questions and you've
8 given me some real honest answers and I appreciate it.

9 I'm an arsonist. I'm a school arsonist. All
10 right. I like to burn down elementary schools. I'm just
11 that kind of guy. So they catch me out at the school one
12 night or the burning embers of what's left of the school, and
13 all my little arson stuff is burned up. And they come up and
14 they go, gee, we see you standing around these burned out
15 schools all the time. What's going on here? And I make some
16 indications that I just might be guilty of something, namely
17 I wreak of gasoline. Okay?

18 A. Okay.

19 Q. Whatever other indications I have. My eyes are
20 glazed. I'm looking at the fire and not the policeman. So
21 they're starting to wonder about me so they take me
22 downtown. And they -- number one, they don't beat me up, so
23 you can forget about that part of the question. Okay.

24 A. Uh-huh.

25 Q. But they give me some Miranda warnings. They only

1 give me three of them. They don't tell me that I have the
2 right to terminate the interview at any time.

3 A. Uh-huh.

4 Q. They start talking to me about the crime.

5 A. Uh-huh.

6 Q. I tell them about the crime, and I don't ask to stop
7 the questions. I don't ask for an attorney. All right. I
8 don't refuse to speak to them or anything like that. So they
9 don't beat me up. They know that I knew I had the right to
10 have an attorney, that if I didn't have any money, that they
11 would give me an attorney. They knew that this stuff could
12 be used against me, and I knew all of that. But I really
13 didn't know that I could stop. I never even asked to stop.
14 Okay.

15 Before my trial, I'm upstairs in the Dallas County
16 Jail. And I'm asking everybody, all my jail buddies, what
17 kind of school is in your neighborhood. Is it a wood
18 school? Are there many fire escapes? Is there any dry
19 leaves or paper or paint cans anywhere around this school?
20 And then we come down, and we have my trial. It is proven
21 that I was at the scene, that confessed to the officers. I
22 was only given three of the warnings. I was not given the
23 fourth warning. Plus you know some other things about me.
24 You know very well that if you let me go, I'm going right out
25 the door with my Bic lighter and I'm heading to the first

1 elementary school I can find out because I made it obvious to
2 everybody upstairs in jail exactly where my head is at about
3 this. There is no other evidence to that burned out school
4 except my confession. Everything else went up in flames. No
5 fingerprints, no matches, no gasoline, no nothing. There is
6 nothing but my statement that I burned the school down and I
7 had a wonderful time doing it.

8 You're sitting on my jury, and the facts are just as
9 I have given them to you. The Judge in his written charge to
10 you says, Mr. Cannon and the other 11 members of the jury,
11 you have got to believe, number one, that this confession
12 wasn't beaten, kicked, stomped, or whatever out of Mr. Byck,
13 which is true, it wasn't. They didn't lay a glove on me.
14 And you've also got to believe that the other four warnings
15 of the Miranda warnings were given. If you do not believe
16 that, you cannot use the confession. You know if you don't
17 use the confession there isn't any evidence against me.
18 Nothing at all. You know if you do not use that confession,
19 I'm walking out the door with you. Well, I probably won't be
20 going out with you. I've got to go back up to the jail and
21 get my cigarette lighter before I leave.

22 What would you do? Would you use the confession?

23 A. Yes.

24 MR. DAVIS: I'm sorry, I've got to object.

25 That's an improper statement, improper questioning --

1 THE COURT: Sustained.

2 MR. DAVIS: I'm going to object to the form of
3 it.

4 THE COURT: Sustained.

5 MR. BYCK: What's the problem?

6 Q. (By Mr. Byck) I love asking you a 20-minute
7 question and getting a 5-second objection and then having to
8 do it all over again, so let me see if I can piece it
9 together for you.

10 We've got the same arson problem. We've got the
11 same exact same deal that you heard, right?

12 A. Okay.

13 Q. The law says that in order for to you use a
14 confession, this confession has to be voluntarily and it has
15 to be properly warned under Section 38.22 of the Texas Code
16 of Criminal Procedure. Right? The warnings are set out in
17 38.22. There are four of them. I was only given three.

18 A. Okay.

19 Q. You are now sitting there with my confession in one
20 hand and the law in the other. And the law says it's got to
21 be voluntary. That means it wasn't beaten out of me, and
22 you've got to have four warnings. It's undisputed in the
23 testimony I only got three warnings.

24 My question to you, sir, is can you follow the law
25 if that's what the law says, disregard my confession, there

1 being no other evidence, find me not guilty? Or will you say
2 to your other 11 members of the jury, listen, they didn't
3 beat it out of him. They gave him three out of the four and
4 he never even asked for the fourth one. He didn't ask to
5 terminate the interview. There is no evidence of that. We
6 know the damage he's done to this school. We also know with
7 evidence that we've heard from people upstairs in jail with
8 him -- see, when police officers talk to me, I make a
9 confession, they got to warn me. When civilian, other jail
10 inmates talk to me and I make the statement against interest,
11 they don't have to give me any warnings, right, because
12 they're not police. And they're not acting like police. So
13 you hear the evidence of these other people saying, yeah, he
14 was talking about burning down elementary schools, wanting to
15 know if they were made of wood or whatever.

16 Would you use the confession or would you follow the
17 precepts of the law under the facts that I've given you in
18 this hypothetical and throw the confession out and turn me
19 loose?

20 MR. DAVIS: Same objection, Your Honor.

21 THE COURT: Sustained.

22 MR. BYCK: Your Honor, may we ask for a
23 specific objection here?

24 THE COURT: Mr. Cannon, the law is that if the
25 full Miranda warnings as required by the United States

1 Supreme Court are not given to and understood by the person
2 that gives the confession, the jury may not consider the
3 confession as any evidence at all. Could you follow that
4 instruction?

5 VENIREPERSON: I understand that.

6 THE COURT: Time is up. If you would excuse
7 Mr. Cannon.

8 MS. LITTLE: Your Honor, just for
9 clarification, I think Mr. Cannon said that he understood
10 it. I don't know that he said --

11 THE COURT: Could you follow it?

12 VENIREPERSON: Yes.

13 MR. BYCK: Your Honor, may I beg the Court's
14 indulgence and have a couple of more minutes?

15 THE COURT: Two minutes.

16 MR. BYCK: Thank you.

17 Q. (By Mr. Byck) Two more things, Mr. Cannon, one of
18 which is -- I'm going to give you last one first in this
19 backward presentation -- is that there may be any number of
20 reasons that you may not feel comfortable or want to sit on
21 this jury that I could literally sit here for the next five
22 hours and ask you questions about and I wouldn't raise the
23 topic. Sir, if there is anything, I'm not asking you the
24 question now, this will be the last question. If there is
25 anything in your background, in your history, your personal

1 finances, in your relationship with people, in your feeling
2 that you're just tired of getting badgered by some bearded
3 overweight attorney for an hour and a half or however long
4 you feel you've been sitting up there, whatever the reason
5 is, if you feel you can't be a fair and impartial juror, tell
6 us. Okay? That's the question I will ask you after I say
7 one more thing to you.

8 And that is, Mr. Cannon, everybody's got rights
9 here. The defendant has rights. They're in the
10 Constitution. The State has rights. They're in the --
11 codified in law books. They have the right to make
12 objections. You heard them do that, right? The Judge has
13 rights. He has rights to have order in this court. You,
14 sir, as a juror have rights also. You have the right and --
15 well, you're going to be dealing with 11 other strangers.
16 Believe me, they're not going to know you. You're not going
17 to know them. Some of them may be -- I don't know, gee, I
18 hope you don't sell cars for a living, sir, but some of them
19 for want of a better term just may be some real roughshod
20 used car salesmen who will get up in your face, insult you,
21 deface you, diminish you, and try to coerce you or force you
22 into going along with them, using whatever tricks they use.
23 All right? I'm not saying this is going to happen. I am
24 saying this has happened before.

25 You have the right, sir, to deliberate with

1 dignity. You have the right to consider a young man or a
2 young woman's fate under the law without anybody intimidating
3 you, without anybody harassing you, without anybody demeaning
4 you or dissing you or whatever, manipulative techniques they
5 may use to get you to swing around to their point of view.

6 What I'm asking you, sir, is that knowing that you have those
7 rights, if anybody -- if you were to sit on this jury, if
8 anybody back in that jury room were to pull a stunt like that
9 on you, or if you were to see that happen to another juror,
10 would you inform our bailiffs?

11 A. Yes.

12 Q. That something is just not right in here, somebody
13 is getting powered out, somebody is getting arm twisted,
14 somebody is getting, you know, cajoled or fueled, tricked or
15 whatever into doing something that they don't want to do.
16 Would you up that to us?

17 A. Your question is would I tell you that?

18 Q. Right.

19 A. Yes.

20 Q. Well, tell the bailiffs?

21 A. Yes. Yes.

22 Q. Okay. Finally, I'm going to ask you the question I
23 promised to ask you five minutes ago.

24 A. Okay.

25 Q. Is there anything reason you can think of, anything

1 at all, personal, financial historical, medical, who knows,
2 where you would not be a fair and impartial juror in this
3 case? Anything you may know?

4 A. No.

5 Q. Fair enough, sir.

6 MR. BYCK: Pass the witness, Your Honor.

7 THE COURT: Ms. Madore, if you would excuse
8 Mr. Cannon.

9 Mr. Cannon, the attorneys will confer with their
10 respective co-counsel, will then inform me whether or not
11 they wish you to be considered and I'll make the
12 determination as well whether you'll be considered as a
13 future juror. If you'd excuse yourself with Ms. Madore.

14 MS. LITTLE: Is this a juror who had -- who
15 was checked for -- is this a juror who was checked for jury
16 service?

17 MS. MILLER: There is -- Judge, for record
18 purposes, we have run and there is nothing in our data bank
19 that shows that he was evaluated as a juror. And we can
20 offer this into the record if you would like.

21 THE COURT: Fine.

22 MS. LITTLE: Okay. That would be good. As
23 what?

24 MR. DAVIS: Why don't you just put -- could we
25 label this as P as Pretrial 1?

1 THE COURT: Yeah.

2 MS. LITTLE: And of course this questionnaire
3 is part of the record.

4 THE COURT: Yes.

5 Mr. Davis.

6 MR. DAVIS: The State has -- well, we'll offer
7 State's P1 there for the record.

8 (State's Exhibit No. P1 offered)

9 THE COURT: Admitted.

10 (State's Exhibit No. P1 admitted)

11 (State no challenge for cause - Mr. Cannon)

12 MR. DAVIS: And the State has no challenge for
13 cause of this juror.

14 (Defense challenge for cause - Mr. Cannon)

15 MS. BALIDO: Judge, we'd like to make a
16 challenge for cause on this juror, based on the answer to his
17 question in regard to Special Issue Number 2. I believe he
18 said on a number of occasions that if he found the defendant
19 guilty of capital murder and answered Special Issue Number 1
20 yes, that there would be nothing to make him answer Special
21 Issue Number 2 in such a way to give him a life sentence.
22 That was propounded to him on two separate occasions. And
23 additionally, it was only after it was posed to him in such a
24 situation or in such a way that he believe -- he found there
25 was to be mitigating circumstances would he consider it, but

1 he still did say that he would still be leaning towards a
2 death verdict in that case. We believe what that does is,
3 number one, he cannot follow the law. And, number two, that
4 it places an unfair burden on the defense to prove to him
5 that he must answer that question in such a way to give a
6 life sentence.

7 And additionally, this is backed up in the
8 questionnaire on page number 4, that the questions dealing
9 with mitigation, specifically a person's destiny or fate is
10 determined by the circumstances of their birth and
11 upbringing. He disagreed with that statement. And
12 additionally genetics -- circumstances of birth, upbringing
13 and environment, should be considered when determining the
14 proper punishment of someone convicted of a crime, he marked
15 that he disagreed with that.

16 We believe his answers on the stand initially and
17 his answers on the questionnaire show that he could not
18 follow the law and the case and only after he realized that
19 he was about to be struck did he change his answer to such
20 that he figured out what he needed to say to be on this jury
21 and we'd object to him and we would say that we proved up
22 enough to show that he can't follow the law.

23 THE COURT: With regard specifically to the
24 matters about which the defense makes reference on page 4 of
25 the questionnaire, I found Mr. Cannon, in an effort to honor

1 the desire of Dr. Martin Luther King, that we have a color
2 free biased society and find his answers to be appropriate in
3 light of Dr. King's vote for the future of this country. I
4 find based upon the totality of the questions by counsel for
5 both sides, in light of the United States Supreme Court
6 admonishments of Wainwright versus Wit, challenge for cause
7 by the defense is denied. Mr. Cannon will be Prospective
8 Juror Number 4.

9 (Challenge for Cause Denied)

10 MS. BALIDO: Judge, we'd also like to make an
11 additional motion to strike for cause based on his answer in
12 the -- in the questionnaire, specifically page number 3, that
13 the burden of proof in a criminal case is up to the accused.
14 And we'd say that he should be disqualified for that reason.

15 (Marlin Cannon Prospective Juror No. 4)

16 THE COURT: The Court will stand on its
17 previous ruling. I note that the defense had ample -- had 30
18 minutes of time to bring that question to the attention --
19 find the defense had ample opportunity in 30 minutes to make
20 that question, chose for whatever reason strategic not to and
21 I find they have waived that objection by virtue of no
22 questions.

23 If you would bring Mr. Cannon back in.

24 (Venireperson returned to courtroom.)

25 THE COURT: Mr. Cannon, have a seat for just a

1 moment or two if you would, please, sir. Mr. Cannon, you
2 will remain under consideration as a prospective juror in the
3 case. I've asked Ms. Daily, the Court Administrator, to come
4 in, to confirm some home phone numbers, work phone numbers
5 with you. And with your permission, going to ask that you
6 would allow Mr. Rees, the bailiff, to take a Polaroid picture
7 of you. Let me tell you why. Until we get to this 48, the
8 attorneys will then exercise their peremptory challenges. We
9 talk to an awful lot of people. Sometimes we start
10 forgetting whose face matches up with information the
11 attorneys have gotten during the questioning and the
12 questionnaires. Once that jury has been selected, assuming
13 you allow us to take your picture, I promise you it will be
14 shredded, will not be used for any purpose. With your
15 permission, may the bailiff take your picture for this
16 limited purpose?

17 VENIREPERSON: Yes.

18 THE COURT: Ms. Daily, if you would confirm
19 phone numbers with Mr. Cannon.

20 Mr. Cannon, do not go to the Dallas Morning News
21 archives and get a copy of the paper. Don't discuss with
22 anybody, family members or friends, including your police
23 officer daughter, police officer community supervision
24 relative, nor your brother, that you remain under
25 consideration as a juror in this case. Okay?

1 VENIREPERSON: Okay.

2 THE COURT: Any questions for me?

3 VENIREPERSON: No.

4 THE COURT: Thank you. After the little
5 housekeeping chores have been completed, you're free to go
6 home, back to work as the case may be.

7 VENIREPERSON: Okay. Thank you.

8 THE COURT: Thank you.

9 (Recess taken.)

10 THE COURT: Mr. Griffing, have a seat if you
11 will, please.

12 Mr. Griffing, we'll move right into individual
13 questioning. Again, we begin with the State, from the Dallas
14 District Attorneys Office, the Honorable Mary Miller.

15 MS. MILLER: Yes, sir.

16 THE COURT: Ms. Miller.

17 GREGORY GRIFFING

18 was called as a venireperson by the Court and, after having
19 been first duly sworn, testified as follows:

20 Voir Dire Examination

21 By Ms. Miller:

22 Q. Good afternoon, Mr. Griffing. How are you doing?

23 A. Good.

24 Q. One real quick question off of your questionnaire,
25 you didn't check whether or not you knew either Mr. Davis or

1 myself and I didn't know if that was a mistake or whether you
2 thought you did and you needed another opportunity or --

3 A. No, I don't know either of you.

4 Q. Okay. Just -- I just wanted to do that for clerical
5 purposes.

6 Mr. Griffing, back when -- do you remember when we
7 met in the Central Jury Room when they brought about 500
8 people in and Judge Entz introduced all of us and then he
9 also introduced the defendant, Jedidiah Murphy, and said that
10 the State was seeking death against the defendant. This was
11 a capital murder case. Do you remember what your first
12 impression was? What you thought when you heard that, Mr.
13 Griffing?

14 A. Well, I've never been to any -- this is a new
15 experience for me, so -- what was my first thought? I sort
16 of felt, you know, the gravity of the situation come on me.
17 I felt -- you know, it became a very serious thing. It
18 changed the complexion of the whole thing. My wife was
19 picked as a juror, but it was a drug trafficking case. And I
20 think she got a sentence and that was -- that was pretty
21 serious, but this is an entirely different ballgame for me.

22 Q. And when your wife -- and I noticed in your
23 questionnaire that you said your wife was picked in a drug
24 trafficking case. Do you recall whether or not that was here
25 in Dallas County or another county? And whether it was

1 county court or --

2 A. It was in Houston, Texas.

3 Q. It was in Houston. Okay. And did she tell you
4 anything at all about it other than it was drug trafficking?

5 A. No, not that -- the only thing she said was a lady
6 had been caught at the rail station with a briefcase full of
7 cocaine and there was another man with some money and they
8 were going to make an exchange and the police arrested them
9 and that's about all she said about it.

10 Q. Okay. But you yourself have no personal experience
11 as far as sitting as a juror; is that correct?

12 A. No. No, ma'am.

13 Q. Now, when you said that when you heard that this was
14 a capital murder case, that it kind of changed the severity
15 or gravity of --

16 A. Right.

17 Q. -- your thoughts. And that's fully understandable
18 because this is obviously the most serious type of case that
19 we have in our criminal justice system because -- and just so
20 you'll understand, the State is going to be asking that you
21 answer Special Issues Number 1 and Number 2 in such a way,
22 yes and no, that the defendant, Jedidiah Murphy, will be
23 sentenced to death. And that if the State prevails, that
24 someday in the future the defendant, Jedidiah Murphy, will
25 die down in Huntsville, will lay dead on a gurney.

1 Now, I understand what you put in your questionnaire
2 about the death penalty and that you believed that it was in
3 fact appropriate in certain cases; is that correct?

4 A. Yeah, if it's likely that it's going to recur. You
5 know, it's -- and that's really Special Issue Number 1. And
6 that was my opinion when I wrote that before I -- before I
7 heard about the -- I think the Judge did mention the special
8 issues, but they didn't really register with me at that time
9 so that was my opinion that I wrote in the questionnaire, is
10 if it was going to be a repeat thing, you know, and there's
11 no chance of reform.

12 Q. Well, let's talk about the special issues since you
13 brought those up. Special Issue Number 1, whether there is a
14 probability that the defendant would commit criminal acts of
15 violence that would constitute a continuing threat to
16 society.

17 A. Uh-huh.

18 Q. Okay. There's a couple of terms there. First of
19 all, what would you like to hear in order to answer that
20 question? What type of evidence would you like to see?

21 A. Gosh, how can you tell if somebody is going to do
22 something like that again? I guess if they've had a past
23 history of grievous offenses, you know, you might infer they
24 might do something else in the future if -- if there is
25 something in their psychological makeup that you think can't

1 be changed by therapy or something. Maybe that was the cause
2 of the criminal act.

3 Q. Okay. So you said whether they have commit acts --
4 criminal acts in the past?

5 A. Uh-huh.

6 Q. And a lot of people -- I'm sorry?

7 A. Maybe there was an escalation of criminal acts up
8 until that. And if you had the feeling that escalation would
9 continue if released, you know.

10 Q. Okay. A lot of people say that the best predictor
11 of the future is the past.

12 A. Uh-huh.

13 Q. Looking at somebody's criminal history, whether or
14 not they have been given the opportunity to rehabilitate --
15 be rehabilitated, whether they took that opportunity.

16 A. Uh-huh.

17 Q. Is that something that you would like to look at?

18 A. Absolutely.

19 Q. Well, there are other people also, Mr. Griffing, who
20 say, well, that person might not have ever been in trouble
21 before, but the offense itself is severe enough.

22 A. Uh-huh.

23 Q. The facts of the offense alone are such that I could
24 answer that question yes. How do you feel about that?

25 A. You mean in terms of the cruelty of the act, what

1 would be -- what would be an offense that you would think
2 that -- a one-time offense that would --

3 Q. When we're talking about Special Issue Number 1,
4 we're talking about capital murder. You have found the
5 person guilty of capital murder.

6 A. Uh-huh.

7 Q. And as the Judge told you before, it's murder plus
8 something else. And we'll get into those -- into that in a
9 minute, but you have found the person specifically intended
10 to kill another person and they did that in the course of
11 committing another offense. And in this particular case we
12 have alleged during the commission of robbery or kidnapping.

13 A. Uh-huh.

14 Q. Okay. So say for purposes of this question, you
15 have already found the person guilty of specifically
16 intending to kill, take another person's life, and they did
17 it during the commission of another offense such as robbery
18 or kidnapping. And that person has not ever been in trouble
19 before. There is no prior criminal history.

20 A. Uh-huh.

21 Q. There are some people who say the facts of the
22 offense alone could be heinous enough to answer that question
23 yes. How do you feel about that?

24 A. Well, I guess if they like had very detailed plans,
25 you know, prior to the event, that would -- if -- it wasn't

1 a -- you know, a murder out of passion or anger, something,
2 some emotional trigger but instead was a calculated crime,
3 then I could -- I could see going with it, but I'm not -- I'm
4 not sure what other circumstances there are.

5 Q. And that's fine, Mr. Griffing. I'm not asking you
6 to be able to tell me or articulate what the specific set of
7 circumstances are, but do you believe that there could be
8 facts heinous enough that those standing alone without
9 necessarily a prior criminal history could make you answer
10 that question yes?

11 A. Yes, I do, and I gave you an example of it.

12 Q. Okay. Now, let's look -- there's a couple of terms
13 in there. It says probability. You see, the legislature
14 didn't say that there is a certainty that the defendant would
15 commit criminal acts. They didn't say that there's a mere
16 chance or possibility, but they came down right in the middle
17 with probability. A lot of people, or most people say
18 probability means more likely than not.

19 Is that basically what it means to you?

20 A. Yes. Chances are.

21 Q. Okay. And there it says would commit criminal acts
22 of violence. You see, it doesn't just say criminal acts. It
23 doesn't say murders. It doesn't say aggravated robberies.
24 It says criminal acts of violence which could -- what does
25 that mean to you?

1 A. Well, you injure someone else in pursuit of a crime,
2 you know, you do something violent.

3 Q. Okay.

4 A. So I guess it wouldn't -- if not murder maybe --
5 maybe you mug someone. Would that be a criminal act of
6 violence?

7 Q. And so that's what it would be to you, anything from
8 like an assault all the way up to murder?

9 A. That's the way I would interpret that statement,
10 yes, ma'am.

11 Q. Okay. But not just murders in and of themselves?

12 A. Yeah, that's -- that was my original interpretation
13 when I first read it, but now that you've explained it to me,
14 I can see a broader definition.

15 THE COURT: Would you consider a property
16 crime such as writing a hot check to be a crime of violence
17 or not or would you --

18 VENIREPERSON: No.

19 THE COURT: -- person on person type --

20 VENIREPERSON: Yeah, violence is you injure
21 someone.

22 THE COURT: All right.

23 Q. (By Ms. Miller) And then it says continuing threat
24 to society. What does society mean to you?

25 A. Well, your -- the other people around you, the

1 people you know -- innocent bystanders that, you know, get
2 caught in your violent acts.

3 Q. Okay. Can you see where -- the Judge already told
4 that you if a person is found guilty of capital murder,
5 they're looking at a minimum life sentence which equals 40
6 years. Do you see where society could include people in the
7 penitentiary, such as prison guards, nurses, other inmates,
8 chaplains, anyone who may find themselves in the
9 penitentiary?

10 A. They are part of society, sure.

11 Q. Okay. And do you think that they should be
12 protected also from criminal acts of violence?

13 A. Oh, sure, absolutely.

14 Q. Now, there are some people who say that because the
15 defendant is going to be at least minimally confined for 40
16 years, that society should only be the people in the
17 penitentiary and not people out in the world who are walking
18 free, but that's not what the law says. It's anyone the
19 defendant might have a chance of coming in contact with.

20 Do you agree with that, Mr. Griffing?

21 A. Uh-huh. Yes, ma'am.

22 Q. Do you have any questions about Special Issue Number
23 1?

24 A. No, I think that sums it up.

25 Q. Okay. And on Special Issue Number 1 the State has

1 the burden of proof just as in the guilt/innocence phase. We
2 have the prove the answer to that should be yes, and we have
3 to prove that beyond a reasonable doubt.

4 Can you hold the State to that burden of proof, Mr.
5 Griffing?

6 A. Yes, ma'am.

7 Q. Okay. Let's look at Special Issue Number 2, whether
8 taking into consideration all of the evidence, including the
9 circumstances of the offense, defendant's character and
10 background, personal moral culpability of the defendant,
11 there is sufficient mitigating circumstance or circumstances
12 to warrant that a sentence of life imprisonment rather than a
13 death sentence be imposed. Okay. When you get to Special
14 Issue Number 2 you have already found the defendant guilty of
15 capital murder, you've already answered Special Issue Number
16 1 yes. You have said, okay, he specifically intended to kill
17 someone and he did it in the commission of another offense.
18 I have found beyond a reasonable doubt that he is -- there is
19 a probability that he will commit criminal acts of violence
20 and be a continuing threat to society.

21 Then Special Issue Number 2 is basically a safety
22 net.

23 A. Uh-huh.

24 Q. It has you look and see whether or not there is
25 sufficient mitigating circumstances to warrant the death

1 sentence being changed to life. Okay. Do you understand
2 that part?

3 A. Uh-huh.

4 Q. You have to answer out for the court reporter.

5 A. Yes, I do.

6 Q. Okay. Now, there is no burden of proof on Special
7 Issue Number 2. Basically the mitigating evidence can come
8 from either side. The State may put on a witness who
9 testifies, and they may bring out some very aggravating
10 circumstances, but then also during that testimony there may
11 be mitigating circumstances, also.

12 Can you consider the mitigating circumstances no
13 matter where it comes from?

14 A. You mean some other issue compelled that person to
15 do that crime?

16 Q. Well, it may be not that they compelled them to
17 commit the crime, but there -- some people say, and there is
18 no laundry list of mitigating circumstances, Mr. Griffing.
19 Some people say drug use or alcohol use may be a mitigating
20 circumstance. Other people say that's aggravating. Some
21 people say that mental illness is a mitigating circumstance.
22 Other people say that's aggravating. Some people say the
23 fact that the person was raised in a good home, went to good
24 schools and had every advantage is a mitigating
25 circumstance. Other people say, no, that's aggravating. So

1 there is nothing that says you -- this is mitigating or this
2 is aggravating. It's basically what you think that it is.
3 So people may present it and try to convince you that it's
4 mitigating.

5 Can you consider the evidence as it's presented?

6 A. Yes, I believe I could.

7 Q. Okay. And if it is sufficiently mitigating because
8 you see, there can be mitigating circumstances, but that
9 doesn't mean that they are sufficiently mitigating to change
10 a death sentence to life. Do you see that, also?

11 A. Uh-huh. Yes, ma'am.

12 Q. And just because it's presented as mitigating, can
13 you consider it and make that determination as to whether you
14 consider it mitigating or not?

15 A. Yes, I could make that.

16 Q. Okay. Let's talk about some of the things that
17 people say might be mitigating. Some people say age. How do
18 you feel about that?

19 A. As in someone that's young?

20 Q. The age of the defendant.

21 A. If it's a really young person, they don't know what
22 they're doing?

23 Q. Right. Some people say, well, they're young
24 therefore they shouldn't be held accountable or to the same
25 standard. Other people say, hey, they have reached the legal

1 age, they -- therefore they should be held accountable the
2 same as anyone else.

3 A. I think in the case of that child in California, I
4 think he was 15, 16 years old, I could understand that as
5 being mitigating circumstance, because to him maybe the gun
6 is a toy. He sees people use it on television and he doesn't
7 know it's a for real thing and it causes someone else
8 injury --

9 THE COURT: You talking about the recent young
10 man at Santee High School that was killing the students?

11 VENIREPERSON: He took his father's pistol in
12 and shot a bunch of people. I don't know what his age was.
13 But I could see if he was young enough, that would be a
14 mitigating situation.

15 Q. (By Ms. Miller) Well, and in that particular case
16 he's a juvenile. And in Texas juveniles cannot be tried for
17 death. So you're talking about someone who is basically of
18 the legal age in order to be trying someone for death. So
19 does that affect your --

20 A. No. Then the age wouldn't be mitigating.

21 Q. Okay.

22 A. I mean, if they're old enough to know what they're
23 doing, you know, they're not a teenager, then age is not
24 mitigating.

25 Q. Mr. Griffing, do you know anyone that has used any

1 illegal substances, such as marijuana, cocaine, heroin,
2 things like that?

3 A. Not personally, no.

4 Q. Okay. Do you have -- what are your feelings about
5 that? Do you know or do you have an opinion as to how that
6 might affect someone?

7 A. I guess some of the really strong drugs could make
8 someone lose their sense of reality and do things they
9 wouldn't do otherwise.

10 Q. I believe on page 5 your voluntary intoxication does
11 not constitute a defense to a commission of a crime, you said
12 that you agreed with that law. That if a person voluntarily
13 ingested a controlled substance or alcohol, that they should
14 still be held accountable. And is that the way you still
15 feel, Mr. Griffing?

16 A. Yeah, but I guess there are drugs that -- maybe like
17 LSD or something that are strong enough that a person's
18 understanding of what's going on may be confused.

19 Q. Okay. So if they voluntarily ingested that --

20 A. Oh, I see.

21 Q. -- do you think that that -- that they therefore
22 shouldn't be held accountable, if they voluntarily took that
23 drug?

24 A. There you go. If they do it again, they do the
25 crime again, so I guess the fact they chose to take the drug

1 doesn't excuse them from the crime. I guess I would agree
2 with that.

3 Q. Do you think that it might make a difference as to
4 whether or not the person had used the drugs in the past and
5 perhaps knew how it affected them?

6 A. Oh, absolutely.

7 Q. As opposed to as you were saying a first time user?

8 A. Absolutely.

9 Q. Okay. Is that something that you would perhaps want
10 to know, if they were trying to say drug or alcohol use was
11 perhaps a mitigating factor? As to how much that they had
12 used, whether it was the first time, that type thing?

13 A. Well, if they have a long history of using drugs,
14 obviously they are going to continue to use it, so they're
15 going to be a continuing threat to society, because likely
16 they'll use it in the future if allowed to.

17 Q. How about sexual abuse? Do you know anyone who has
18 made a claim of sexual abuse?

19 A. No, ma'am.

20 Q. Okay. Do you believe, Mr. Griffing, that there are
21 people who might falsely make an accusation of sexual abuse?

22 A. I read about one --

23 Q. Okay.

24 A. -- in the paper this last week. This man was
25 arrested and put in prison for nine years and they had some

1 DNA testing done and he's been released by the Texas penal
2 system. And he was accused of rape, and the woman that he
3 supposedly raped said she -- you know, picked him out of a
4 lineup, so that's a case I read about.

5 Q. Okay. How about someone claiming they were a victim
6 of sexual abuse? Do you think that there are people out
7 there who could falsely claim that they were a victim of
8 sexual abuse?

9 A. I could see that happening, yes.

10 Q. Do you think there are people out there who could
11 falsely claim that if they are perhaps in a criminal
12 situation looking at a large sentence?

13 A. I'm sorry, come again.

14 Q. Do you think there are people out there who might
15 falsely claim that they were a victim of sexual abuse in
16 order to basically mitigate their punishment if they're
17 facing a criminal sentence?

18 A. Yes, I do.

19 Q. And if you're looking at sexual abuse, would you
20 want to know how -- well, when the sexual abuse allegedly
21 occurred, how long it took for the person to make an outcry?
22 In other words, was it several years before they made the
23 claim? Was it after they had criminal charges against them?
24 Those types of things. Are those the types of things you
25 would want to look at in making a determination as whether

1 the sexual abuse was in fact -- whether you believed it was
2 in fact -- did in fact happen?

3 A. In other words, did the person that was -- that made
4 the claim make it almost immediately after the event or much
5 later?

6 Q. Right.

7 A. Does that make a difference? I can see where
8 something could happen -- you know, sexual abuse could happen
9 and it's much later that they get the courage to bring it
10 up -- to, you know, tell the authorities that this happened.
11 I could see that could happen.

12 Q. Is that something that you would want to know in
13 making a determination, basically looking at all the facts
14 and circumstances as to when the outcry was, were they --
15 what did they have going on in their life? Were they facing
16 criminal charges when they suddenly made this accusation?

17 A. Oh, yes, ma'am. I see, yes, definitely. I would
18 want to know that.

19 Q. Okay. Mental illness. Do you know -- and obviously
20 that's -- it's a serious problem nowadays, and it's come much
21 more to the forefront. Do you know anyone who has suffered
22 from mental illness?

23 A. No, not personally.

24 Q. Okay. Do you believe that there are some people who
25 are able to fake or fool doctors regarding mental illness?

1 A. I would imagine so. I think some people can control
2 their behavior to the point that they can fool most anybody
3 for anything.

4 Q. Just as with sexual abuse, would you basically want
5 to look at the history, doctors' reports, medical reports,
6 those types of things in making the determination as to
7 whether or not you believed the mental illness was in fact
8 properly diagnosed?

9 A. Yes, I would.

10 Q. How about remorse? Some people say that remorse is
11 a mitigating factor. They feel sorry. They're very sorry.
12 Claim that they're sorry for what they have done. One of the
13 things you might look at is did the person after the offense
14 was committed stay there, call 911, crying, very remorseful,
15 fully cooperative with the police versus someone who fled the
16 scene, noncooperative with the police, were basically caught
17 not due to anything that -- anything that they did to help
18 turn themselves in. Is that -- how do you feel about that?

19 A. Well, I guess that's Issue Number 1. I mean, if
20 they have remorse, that means there's a chance that they may
21 stop that behavior, so it does have an affect.

22 Q. When you're looking at remorse, Mr. Griffing, would
23 you want to look at when the claims of remorse took place?

24 A. Sure, because they may be fictitious.

25 Q. Okay. How would you expect a defendant who is

1 waiting trial on a capital murder to act while they're in
2 jail? Would you expect them to be on their best behavior?
3 Would you expect them to be causing a ruckus and creating all
4 kinds of problems?

5 A. Oh, best behavior.

6 Q. Okay. To go back to what we were talking about as
7 far as the death penalty goes -- and now that we've talked
8 about the special issues, when you were asked to fill out the
9 questionnaire, obviously the death penalty was in the
10 abstract. And a lot of people say I believe in the death
11 penalty. I think it's good. I think that there is a purpose
12 for it here in society. However, that was in the abstract.
13 Now that I'm sitting here facing the defendant, I can see
14 that he's a living, breathing human being. There is
15 nothing -- Jedidiah Murphy is not abstract.

16 How do you feel about it now, participating in this
17 type of case, knowing that if the State succeeds, the
18 defendant will lay dead on a gurney in Huntsville?

19 A. It does make a serious impact. It does make you --
20 you know, when you read articles in the paper and whatnot and
21 magazines and stuff, it's -- like you said, if it's abstract,
22 it's easy to say, oh, yeah, I agree with that, it does make
23 you pause and consider.

24 Q. When you say it makes you pause and consider,
25 obviously you haven't taken an oath to be a juror yet, Mr.

1 Griffing.

2 A. Right.

3 Q. Is it the type of thing that if the State proved to
4 you beyond a reasonable doubt that the defendant was in fact
5 guilty of capital murder and we proved Special Issue Number 1
6 should be answered yes, and you did not find any mitigating
7 evidence sufficient to change a death sentence to life, do
8 you have the fortitude to do that?

9 A. When I say pause to consider, I would consider the
10 evidence more carefully now that I realize it's a real
11 person, but under the right set of circumstances I could
12 still answer yes and no to those two.

13 Q. Okay. The burden of proof, as we said, is on the
14 State to prove it beyond a reasonable doubt. It's not 100
15 percent certain. It's not beyond a shadow of doubt like a
16 lot of the TV shows show because if you -- basically if you
17 had to be 100 percent certain, you would have been a witness
18 in this case, you wouldn't be qualified to sit as a juror.

19 So can you hold the State to beyond a reasonable
20 doubt?

21 A. Yes, ma'am.

22 Q. Do you have any questions about that?

23 A. No, I think I understand what you mean by reasonable
24 doubt.

25 Q. Okay. Again, the defendant has certain rights, and

1 one of them is the right to remain silent. We cannot force
2 the defendant to take the stand. His attorneys cannot force
3 him to take the stand. And the Court will admonish you that
4 you cannot hold that against the defendant or use it for any
5 reason.

6 Can you follow that law?

7 A. Yes, ma'am.

8 Q. Okay. Have you -- and just because a defendant
9 takes the stand does not mean that he's presumed to be a
10 truth teller. You judge him by the same yardstick that you
11 judge every other witness.

12 Can you do that, Mr. Griffing?

13 A. Yes, I can.

14 Q. Okay. Witness credibility. Things we talked about
15 you judge the defendant by the same yardstick as you do any
16 other witness. The law says that you don't automatically
17 believe or disbelieve a witness because of who they are, but
18 you wait to listen to what they have to say and then make the
19 determination whether you choose to believe all, part, or
20 none of what they say. Some people say, well, police
21 officers, I would automatically believe them because of who
22 they are. Other people say I wouldn't believe a thing that
23 they say because of who they are, because of the experiences
24 that they've had.

25 Can you wait, listen to each witness, and make the

1 determination as to whether or not you believe them based on
2 what you hear and their demeanor on the stand? Can you do
3 that, Mr. Griffing?

4 A. Yes, I can.

5 Q. And so regardless of what the witness's profession
6 is, you're not going to believe them just because of who they
7 are?

8 A. That's correct.

9 Q. Is that correct?

10 A. Yes.

11 Q. Okay. Have you ever met anyone who you think is a
12 pathological liar, Mr. Griffing?

13 A. Yes, I have.

14 Q. Okay. And do you -- do you think then that there
15 are people who habitually lie?

16 A. Oh, I know there are.

17 Q. And can you think of a reason why people might lie?

18 A. The person I knew did it -- it was an attention
19 getting thing. I don't understand a motivation for it, but
20 he -- he did it -- even when it was obvious he was lying, he
21 would lie.

22 Q. Okay. Do you think there are ways to determine
23 whether a person is lying or not?

24 A. With time, sure.

25 Q. Okay. Can you -- can you think of other reasons why

1 a person might lie?

2 A. Well, if they're trying to cover something up,
3 trying to hide -- hide the truth because of the consequences
4 of it, if it comes to light, if the truth comes to light, the
5 consequences they're trying to avoid.

6 Q. To avoid criminal punishment or accountability?

7 A. Yes.

8 Q. Okay. Now, one of the things that you said is
9 proving the case beyond a reasonable doubt. What do you
10 think of when you hear the term "circumstantial evidence"?

11 A. I guess I just think of evidence as a little bit
12 weak, you know, it's not completely convincing in itself.
13 But maybe if there is enough of it or there is other
14 evidence, that circumstantial may complement the stronger
15 evidence.

16 Q. And, Mr. Griffing, that -- I hear that quite a lot.
17 I've been doing this for a long time, and a lot of people
18 think circumstantial evidence is weak. Did you know that DNA
19 is circumstantial evidence?

20 A. No, I did not.

21 Q. Did you know that fingerprints are circumstantial
22 evidence?

23 A. No, I did not.

24 Q. Basically anything other than eyewitness testimony
25 is circumstantial evidence. Would that change your thoughts

1 on circumstantial?

2 A. Oh, absolutely. I did not know that.

3 Q. Do you believe that you could base your verdict
4 solely on circumstantial evidence without an eyewitness?

5 A. Well, if it's like DNA and fingerprints, of course,
6 yes.

7 Q. We talked about murder plus. Capital murder is
8 murder plus another -- in this particular case, offense
9 robbery or kidnapping. If the State fails to prove the
10 underlying offense, such as robbery or kidnapping, and just
11 proves murder, the penalty range is anywhere from 5 years up
12 to 99 years or life, whereas if you answered Special Issue
13 Number 1 yes and Number 2 no, then the Judge has no choice
14 but to sentence the Defendant to death. However, if the jury
15 finds the defendant guilty of murder and not capital murder,
16 the jury would then be called upon to assess the punishment
17 somewhere within the penalty range anywhere from 5 years up
18 to 99 years or life. We're not asking you whether you can
19 conceive of a set of circumstances where the minimum, 5 years
20 is appropriate, or the maximum 99 years or life is
21 appropriate, but could you keep an open mind, wait to hear
22 all of the evidence, and then assess your punishment
23 somewhere within that range based on the facts that you hear?

24 A. Sure.

25 Q. In other words, you're not foreclosed to a 5-year

1 sentence on murder, and you're not foreclosed to 99 years or
2 life if you heard a proper set of circumstances?

3 A. With the right circumstances, sure.

4 Q. Okay. And that's all that we're asking to you do.

5 THE COURT: Please wind it up, Ms. Miller.

6 MS. MILLER: Okay.

7 Q. (By Ms. Miller) Are there any questions that you
8 have, Mr. Griffing? Have I thoroughly confused you on
9 anything or do you have any questions?

10 A. I'm just curious. There's so much in the news about
11 DNA. Is that a common technique now like fingerprints in
12 terms of evidence? Is that commonly presented in courtrooms
13 now, or is that sort of leading edge?

14 Q. It's much more common now than it used to be.

15 A. Okay. I see.

16 Q. Does that answer your question?

17 A. Yes, ma'am.

18 THE COURT: But DNA evidence is not always
19 available, depending on the circumstances.

20 Q. (By Ms. Miller) I should say if there's sufficient
21 evidence for DNA to be tested, because there has to be
22 certain amounts in order for a proper test to be done.

23 Is there anything else?

24 A. No, that's it.

25 Q. Thank you, Mr. Griffing.

1 A. Thank you.

2 THE COURT: Mr. Griffing, let me kind of
3 follow up on that if I may. Been at this for a number of
4 years. Given the seriousness of the possible punishment in a
5 case such as this type, I want you to rest assured that if
6 the request were to be made by the defense for a DNA test to
7 be done, assuming there is that evidence in existence, and if
8 it's not in existence, there's nothing to test. You
9 understand that?

10 VENIREPERSON: Sure.

11 THE COURT: If there is evidence in existence
12 that would assist the jury, DNA type evidence request were to
13 be made, I would order it to be done. Because the United
14 States Supreme Court have on over two dozen cases utilized
15 this phrase "death is different." So I want you to be
16 assured that if a request is made, I will see to it that
17 funds are made available to do a DNA test.

18 Does that make you feel any better?

19 VENIREPERSON: Sure.

20 THE COURT: And I don't think there's any
21 Judge that I know of, surely in Dallas County, that does not
22 feel exactly the same way that I do. I would like to say
23 that's true statewide and nationwide. Can't say that because
24 obviously I don't know those men and women as well as I know
25 my 14 colleagues here in Dallas County. But rest assured

1 that there's not a single one of the 15 of us that have this
2 type of judicial responsibility in Dallas County if it were
3 available would not see to it that that type of test was
4 performed. Okay?

5 VENIREPERSON: Yes, sir.

6 THE COURT: Begin on behalf of Mr. Murphy with
7 the Honorable Michael Byck.

8 MR. BYCK: Thank you, Your Honor.

9 Cross-Examination

10 By Mr. Byck:

11 Q. Mr. Griffing, I've got a bunch of things to go over
12 with you, and I need to go over them with you very quickly
13 because I have a limited amount of time.

14 First of all, I want to thank you. I want to thank
15 you, A, for showing up down here. You really didn't even
16 have to do that because we don't arrest the people that we
17 summons as jurors who do not show up. I also want to thank
18 you for the answers that you've given to Ms. Miller. I've
19 noticed the seriousness and the concentration that you've
20 given them. I would only ask that you would do the same for
21 me. Fair enough?

22 A. You bet.

23 Q. It's getting late in the day. I'm going to undo my
24 tie a little bit. If I start to mumble or confuse you, just
25 say, just a minute, Mr. Byck, would you mind starting that

1 over again because it doesn't make any sense to me. Okay?

2 A. Okay.

3 Q. In going over your questionnaire, I noticed a couple
4 of things. One of the things that I noticed was that in your
5 comments on attorneys, prison systems, police officers, death
6 penalty, things like that, you talked about prosecutors. And
7 you said that prosecutors are villainized.

8 Where do you draw that conclusion?

9 A. I don't know. It's just a feeling I have.
10 Sometimes it's like they're the sharks and the defense
11 attorneys have to fight off the sharks. That's just kind of
12 a feeling I get. Maybe -- maybe it's my naivete, you know,
13 having not really experienced the legal system. But it's
14 just kind of a general idea of what things are like.

15 Q. I see. All right. You mentioned here what's the
16 best argument in favor of the death penalty, that the
17 individual would likely murder again. And let me ask you, am
18 I correct in assuming that you have a science-math
19 background?

20 A. That's true.

21 Q. Okay. And in terms of Question Number 1 we talked
22 about whether there is a probability. And Ms. Miller talked
23 to you about probability and you agreed that probability
24 meant more likely than not. I trust your statement of that,
25 but let me tell you why that is so important. The

1 legislature of the State of Texas insists and the law of the
2 State insists that Judge Entz define every word in his jury
3 charge on guilt or innocence, so you will know as you read
4 that indictment that says he intentionally did something, you
5 will know what the word "intentionally" means. The Judge
6 will define it for you. You will know what the phrase "on or
7 about" means. You will know what the phrase "in the course
8 of committing" means. Oddly enough, we do not do that -- the
9 law does not do it and the legislature hasn't allowed it in
10 the second stage. We can argue -- I can say I think the
11 words are just as important in the second stage as the
12 first. Most people would probably agree with me, but that's
13 the point. The point is that the legislature has not done
14 it.

15 When Mrs. Miller asked you about your definition of
16 probability and you agreed that probability meant more likely
17 than not, this is why that is important. Because as a math
18 and science major, you know anything that is not possible --
19 pardon me, anything that is possible, that is not impossible
20 is probable. The degree of probability might be very, very
21 low.

22 A. Right.

23 Q. It might be almost nonexistent, but nevertheless it
24 still is some sort of probable.

25 I submit to you, sir, that what you will be called

1 upon to do if you in fact find my client guilty of the
2 offense of capital murder, and we'll talk about what capital
3 murder is, is you're going to have to do a calculus. You're
4 not going to do an addition or multiplication. You are going
5 to do something very much more complicated than that.
6 Because you're going to have to define probability to
7 yourself. And you've already said it means more likely than
8 not. You may feel after a point in time that we're talking
9 about somebody's life and it ought to be higher than that.
10 You ought to be pretty sure or fairly certain or whatever.
11 That's completely up to you. That is completely up to you.
12 What I'm concerned about, and I take your word that words
13 means what you say that they mean to you, and it will fall no
14 further than more likely than not.

15 We're talking about criminal acts of violence, and
16 the Judge asked you about criminal acts of violence because
17 very frankly -- what is it, about 3:30 in the afternoon. If
18 I went out around the corner and put my dollars in the Coke
19 machine and I didn't get my Coke, you would see a criminal
20 act of violence right before your eyes.

21 A. Right.

22 Q. I would swear I would yell. I would physically
23 attack that machine. I would jump up and down on it and
24 hopefully it wouldn't electrocute me. I don't think that's
25 what they're talking about in Special Issue Number 1, do you?

1 A. No, I do not.

2 Q. Okay. That's fair enough.

3 A. I think I said to another person.

4 Q. Right. Right. Well, you know, four people could be
5 standing around and that machine could theoretically fall
6 over them?

7 A. Right, but that would be --

8 Q. We would take it they would have enough sense to get
9 out of the way.

10 A. My interpretation was if they intentionally injure
11 another person, if they do something and a Coke machine falls
12 and accidentally do something, that's something else versus
13 intentionally injuring that person.

14 Q. Okay. Further, Special Issue Number 1 goes on and
15 talks about constitute a continuing threat to society. And I
16 don't want to get into a discussion of continuing threat
17 versus a periodic or a sporadic threat versus an infrequent
18 threat, an occasional threat, you know, whatever term of
19 curiosity you want to use to describe it. I would hope that
20 you would take continuing threat as words of substance to
21 mean a substantial long-lasting relatively frequently
22 occurring kind of threat, not something that's going to
23 happen once every leap year, right, or, you know, once every
24 ten years or something like that. But again, that's up to
25 you.

1 There again, we talked about society. And again,
2 Ms. Miller was 100 percent correct in saying, you know -- and
3 you were correct in your definition of society. As a matter
4 of fact, you were perfect. I don't even know why I'm talking
5 about it. It's who I'm around, and that's exactly point that
6 I want to make. Anybody could be a threat to anything
7 anywhere if they had a little access to it, if they had a
8 little opportunity to get there. But if they don't, they're
9 not a threat, and I take it that you would --

10 A. If they have access -- I'm sorry.

11 Q. Well, let me give you an example. You've convicted
12 me of capital murder, and you've got to decide whether I get
13 life or death. We all know what death means. And now we
14 know what life means. Life means 40 years in the
15 penitentiary. So if we go back to the jury room in my
16 hypothetical thing and somebody says, well, Mike is --
17 actually I'm 55 years old, but let's say I was 25 years old.
18 Somebody might say, you know, he's 25 years old -- let's make
19 it 30, keep the numbers straight. He has to do 40 in the
20 penitentiary. He's going to be 70 years old. Changes the
21 calculus of my dangerousness if I were to get out, right?
22 70 versus 30 or 35 or 40 or something like that. I'm glad
23 that you can see that point for openers. Because society
24 really doesn't mean where I am. If you're considering --

25 MS. MILLER: Your Honor, we're going to

1 object. It's not necessarily where the person is. The law
2 says anyone that he may come into contact with.

3 THE COURT: Come in contact with.

4 MS. MILLER: The State also does not have to
5 prove that the defendant has access to the person.

6 MR. BYCK: I didn't say the State did.

7 MS. MILLER: I believe he said access -- or a
8 little bit earlier in his hypothetical to the juror.

9 THE COURT: Let's move on.

10 Q. (By Mr. Byck) As Ms. Miller said, that's a correct
11 statement of the law. It's essentially the same thing that I
12 would be saying to you.

13 A. Can I ask you something earlier, Ms. Miller, you
14 said something about age being a mitigating circumstance.
15 Well, if a person served 40 years and they're 70 when they
16 get out, does that age, that age of being 70, is that a
17 mitigating circumstance --

18 Q. If it --

19 A. -- if you have to decide that.

20 Q. If it is to you, sir, it is. If it's not to you --

21 A. It's a juror's interpretation.

22 Q. That's exactly right. That's exactly right.

23 Because as the State has been saying, mitigation goes back
24 and forth. What I consider mitigating, they consider
25 aggravating, and vice versa. So we, of course, are going to

1 feel about various pieces of evidence the way that it would
2 support our case and support our point of view. That's why
3 we don't get to go back in the jury room with you. That's
4 why you-all have the final decision.

5 Let's talk about Question Number 2, and we can talk
6 all day long about mitigation. We don't have time. There is
7 a concept in Question Number 2 that very frankly some people
8 believe in and some people do not. And that con -- that
9 concept is personal moral culpability. And let me see if I
10 can give you sort of a quasi scientific fact setup that would
11 demonstrate that to you.

12 Ms. Little and I, my co-counsel, are nonidentical
13 twins. We were separated at birth. Adopted by two different
14 families. The family that adopted her was a really nice
15 family. I mean, they were loving, nurturing, they taught her
16 to read. They would walk her to school, and they worked
17 hard, gave her the best lessons at home and sent her to good
18 schools, made sure that she had all kinds of intellectual
19 cultural, social enrichment programs. I on the other hand,
20 didn't get adopted by such a good family. As a matter of
21 fact, they were the dysfunctional duo. All right. They
22 argued and fought all the time. They abused me. They did
23 not provide me with, you know, any kind of nurturing or
24 reinforcement or education or anything. They were just as
25 happy I was watching the Flintstones as reading a book. They

1 really didn't care as long as I stayed out of their hair.
2 They didn't encourage me to do a whole lot. They didn't
3 expect much of me. They certainly didn't have the
4 wherewithal to send me to any good schools or anything like
5 that. Okay.

6 My nonidentical twin and I don't see each other for
7 25 years. At the end of 25 years oddly enough we wind up on
8 different corners of the same block of the streets in Dallas.

9 On those two different corners there are two different
10 banks. We are both standing outside those banks with a gun
11 in our pocket and we go into those banks at the same time and
12 say oddly enough the exact same thing, give me the money or
13 I'll kill you. We get let's say the same amount of money,
14 \$25,000 from a properly terrorized bank teller in each of the
15 respective banks. We take the bank bags, put them in our
16 pockets, and we go out the door where we are immediately
17 arrested by the Dallas Police Department in exactly -- almost
18 exactly cookie cutter arrests. Put up your hands, you're
19 under arrest. Okay. The money is in my pocket. The gun is
20 in my other pocket. Don't shoot. That's it. No fights. No
21 fuss. We are both charged with the offense of bank robbery.

22 Do you see or do you not see where we are both
23 guilty of exactly the same offense, but our punishments may
24 be different, due to the individual facts and characteristics
25 of my life versus the individual facts and characteristics of

1 my nonidentical twin's life? You see where --

2 A. Is this a nurture? Is that a nurture versus nature
3 argument?

4 Q. No. It's should she be treated differently than I?

5 A. Because she had the privileged life and you didn't
6 have the privileged life, there is a bit more leniency?

7 Q. That's the answer. The question is do you believe
8 that?

9 A. Sure, I believe your environment does impact you as
10 a person.

11 Q. And should it be considered in punishment? In terms
12 of personal moral culpability?

13 A. It could be a factor in causing you to do that crime
14 maybe, yes.

15 Q. Would you consider it in punishment if you heard it?

16 A. Yes, I would.

17 Q. Okay. Fair enough. Let me see, what else do I want
18 to cover?

19 You -- in your questionnaire asked -- we asked you
20 do you think the death penalty should be available for
21 punishment upon conviction of other criminal offenses. You
22 said yes. And in one of the more -- I don't mean to
23 compliment you, but in one of the more thoughtful answers
24 that I've seen on the questionnaire, you said, yes, for
25 espionage. Let me see if I can parse that a little bit.

1 There's a couple of different types of espionage.
2 There's the espionage where I'm giving out secrets, but the
3 secrets aren't very important. And the other side really
4 doesn't use that secret information very much even though I'm
5 telling secrets. That's for sure. And no secret agents,
6 none of our secret agents get killed as a result of my
7 disclosure of my espionage. There is another kind of
8 espionage that's a whole lot different that Aldrich Ames and
9 those other guys commit. In truth and in fact the
10 information was used, it was valuable, it did change the
11 other side's behavior, and to the extreme, American agents
12 died because of that espionage.

13 Do you see where there would be a difference -- or
14 do you think that if you had to judge two individual cases of
15 espionage, that you would consider the harm done, the use
16 that was made of the information, things like that?

17 A. Oh, absolutely.

18 Q. In terms of punishment?

19 A. Like that guy that worked for the FBI and for 20
20 years or something was giving over secrets and American spies
21 were being put to death in prison in Russia, that's certainly
22 a more heinous crime than someone who gives a secret away for
23 some bomber that really is kind of ineffectual anyway.

24 Q. Fair enough. We're almost done. You are about to
25 be asked on a board for a job that you may not want, so I

1 always give you the last question second to the last and let
2 you think about it.

3 Can you think of any reason, personal, political,
4 social, economic, family, whatever it is -- believe me, I can
5 sit here for an hour and a half ask you questions and I would
6 never come up with it? Can you think of any reason, anything
7 you can think of where you would not be a fair and impartial
8 juror? I'm going to ask you that question in a minute.

9 Last thing I'm going to say to you before I ask you
10 that question is that while this is a capital murder trial of
11 the utmost seriousness to my client, Jedidiah Murphy,
12 obviously his life is at stake here and he has certain
13 rights. Those rights will be protected by Judge Entz. Those
14 rights will be seriously advocated by Ms. Little and myself.
15 And very frankly, those rights will not be lightly trampled
16 by the State because they're just not lawyers like that. The
17 defense attorneys have rights. The State's lawyers have
18 rights. The people of the State of Texas as is put in the
19 indictment have rights. The Court has rights. You know, the
20 Court has a right to have this trial conducted in a civil and
21 calm and rational manner. You know, people don't stand up in
22 the back and yell I did it, I did it, crazy things like that.
23 In other words, it's not carried on like it is, you know, on
24 Al Pacino's set in Hollywood.

25 You, sir, also have rights. You have a right as a

1 juror to a non-hostile, non-threatening deliberation. And
2 I'm sure your life experience, if you've ever bought a used
3 car, you'll certainly know what I'm talking about. You have
4 run into people that have completely different ways of either
5 expressing themselves or trying to get their point across or
6 trying to get you to do something than other people do. Most
7 of your friends, I'm sure, you would like for them to talk
8 you into something using sweet reason and rationality,
9 right? Other people will use psychological motivations and
10 tricks, salesmanship ploys I call them. Other people are
11 used to just straight in your face confrontation where you
12 know they'll ridicule you, denigrate you, or try to brow beat
13 you or however you want to put it into -- you know, into
14 doing what they want you to do, voting the way they want you
15 to do or whatever. What I'm asking you, sir, is if that
16 happens to you, if somebody tries to intimidate you or
17 degrade you or use these power sales techniques that they
18 learn in these -- you know, wherever they learn those
19 techniques. I don't know, used car salesman school or
20 wherever. Will you tell our bailiffs that, listen, I'm back
21 here in a situation where, you know, I can't make a rational
22 decision. One guy is yelling in my ear, and the other guy is
23 threatening me with physical violence. It won't get that
24 bad, believe me, but if something like that were to happen,
25 would you inform our bailiffs?

1 A. Sure. My dad was a car dealer.

2 Q. Okay. Okay.

3 A. Not a used car dealer.

4 Q. Not a used car.

5 A. No.

6 Q. New dealer. Well, not all car dealers are the same.

7 What's more even important because you're a big tall
8 man, you can take care of yourself, is that if that happens
9 to you or somebody else on the jury that isn't as able to
10 defend themselves or stand up for their own rights or just --
11 you know, it's not a weakness of character irrelevant, but it
12 just may be a weakness of personality. You do the same thing
13 and inform our bailiffs. Because, believe me, our Judge is
14 not going to put up with that kind of stuff. We're not going
15 to have anybody browbeat you into a verdict in this case.

16 A. Sure.

17 Q. We're back to the last question. This is the escape
18 clause. This is if you ever wanted out of this deal, raise
19 the flag now. Any reason -- any reason, sir, that you can
20 think of where you would not be a fair and impartial juror?

21 A. None that I can think of.

22 Q. Fair enough.

23 MR. BYCK: Pass the witness.

24 THE COURT: Ms. Madore, would you retire the
25 juror momentarily. In your absence the attorneys will confer

1 with their respective co-counsels. They will then tell me
2 whether they consider you to be a constitutionally qualified
3 juror. I ultimately make that call.

4 VENIREPERSON: Yes, sir.

5 THE COURT: When you return into the courtroom
6 in the next few minutes, I'll let you know whether you remain
7 in consideration. If you'll excuse yourself momentarily with
8 Ms. Madore.

9 (Venireperson excused from courtroom.)

10 THE COURT: Ms. Miller.

11 MS. MILLER: We have no challenges for cause.

12 (State no challenge for cause - Mr. Griffing)

13 MR. BYCK: We have no challenges for cause.

14 (Defense no challenge for cause- Mr. Griffing)

15 MS. LITTLE: Was there a jury evaluation?

16 MS. MILLER: He never sat on one, and his wife
17 was in Houston.

18 MS. LITTLE: Okay.

19 THE COURT: Let me explain to you -- Darline,
20 off the record.

21 (Discussion off the record.)

22 (Gregory Griffing Prospective Juror No. 5)

23 THE COURT: Mr. Griffing, if you would retake
24 your seat for a moment, please.

25 Mr. Griffing, you remain under consideration by the

1 Court as a juror in this case. With your permission, before
2 you leave, I'm going to ask a couple of things. Ms. Daily
3 has come into the courtroom. She is going to confirm home
4 and office work numbers. If they should change before you're
5 notified one way or the other, if you would please give her a
6 call and let her know so we can keep up with you.

7 Also, with your permission, I'm going to ask if you
8 would allow Mr. Rees, the bailiff, to take a Polaroid picture
9 of you. Let me tell you why. We're working our way towards
10 48 qualified jurors from which the 12 will ultimately be
11 selected. The attorneys and I talk to an awful lot of
12 people, and we sometimes blur the faces of persons with the
13 questionnaires and the notes that we've all taken. For the
14 limited purpose of re-familiarizing ourselves once the 48
15 have been selected, may I have your permission to have the
16 bailiff take a Polaroid picture of you? At the conclusion of
17 this process, promise you it will be shredded, not be made a
18 part of any research project of any college or university on
19 jury selection.

20 VENIREPERSON: Sure.

21 THE COURT: May we have your permission to do
22 that? Do you have any questions for us?

23 VENIREPERSON: No, sir, I don't.

24 THE COURT: Please, obviously you need to tell
25 your spouse and employer that you remain under

1 consideration. Do not however go to the Dallas Morning News
2 and get copies of the newspapers back on the date and time of
3 the incident that forms the basis of this indictment. If
4 you're a juror, your decision, along with the other jurors,
5 must be based only on that presented in the courtroom as
6 opposed any extraneous outside matters that you hear in the
7 media, be it print or electronic. Any questions?

8 VENIREPERSON: No, sir.

9 THE COURT: Okay. Fine. You're excused. If
10 you would confirm the information, plus your picture, you're
11 free to go home, back to work as the case may be.

12 VENIREPERSON: Thank you, sir.

13 THE COURT: You're welcome. Thank you.

14 (Recess of proceedings.)
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Reporter's Certificate

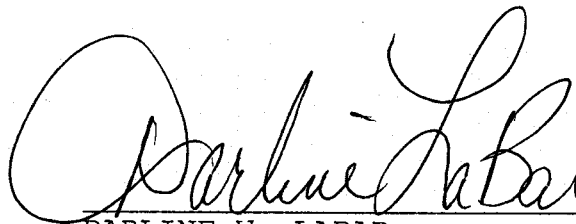
STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline W. LaBar, Official Court Reporter of the 194th Judicial District Court, in and for Dallas County, Texas do hereby certify that the foregoing volume constitutes a true, complete and correct transcript of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the statement of facts, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

Witness my hand this the 15th day of November, A.D., 2001.



DARLINE W. LABAR
Official Court Reporter
194th Judicial District Court
Dallas County, Texas
(214) 653-5803

Certification No. 1064 Expires December 31, 2002